NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

SAILING THE CALM AND ROUGH SEAS: THE INFLUENCE OF WEALTH AND SOVEREIGNTY IN SOUTHEAST ASIAN MARITIME DISPUTES

by

Andromeda Windra Ciptadi

March 2016

Thesis Advisor: Michael S. Malley
Second Reader: Daniel Moran

Approved for public release; distribution is unlimited

THIS PAGE INTENTIONALLY LEFT BLANK

REPORT DOCUMENTATION PAGE			*Form Approved OMB No. 0704–0188*
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704–0188) Washington DC 20503.			
1. AGENCY USE ONLY ***(Leave blank)***	**2. REPORT DATE** March 2016	**3. REPORT TYPE AND DATES COVERED** Master's thesis	
4. TITLE AND SUBTITLE SAILING THE CALM AND ROUGH SEAS: THE INFLUENCE OF WEALTH AND SOVEREIGNTY IN SOUTHEAST ASIAN MARITIME DISPUTES			**5. FUNDING NUMBERS**
6. AUTHOR(S) Andromeda Windra Ciptadi			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943–5000			**8. PERFORMING ORGANIZATION REPORT NUMBER**
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A			**10. SPONSORING / MONITORING AGENCY REPORT NUMBER**
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government. IRB Protocol number ____N/A____.			
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited			**12b. DISTRIBUTION CODE**

13. ABSTRACT (maximum 200 words)

Under what conditions do the Association of Southeast Asian Nations members use peaceful means to resolve their maritime disputes? Why do they resort to military action in some cases, and compromise peacefully in others? This thesis answers these questions by investigating two variables that influence the course of such disputes: the presence of natural resources and disputes over sovereign control of maritime features. This thesis examines four cases of maritime dispute resolution: maritime delimitation in the Singapore Strait by Indonesia and Singapore; joint-development in the Gulf of Thailand; the Pedra Branca dispute between Singapore and Malaysia; and recurring violence in the South China Sea, involving multiple states in the region.

After analyzing the case studies, this research finds that the presence of natural resources, and of conflicting claims of sovereignty over islands or other related features, strongly affect the outcome of the maritime disputes. In general, four different outcomes are possible: maritime delimitation, joint development, third-party settlement, and violent conflict. Southeast Asian countries are likely to employ peaceful measures in a situation where at least one of the two variables studied here is absent. If both of them are present, maritime disputes will likely end in violence.

14. SUBJECT TERMS maritime disputes, TAC, UNCLOS, Southeast Asia, ASEAN, international arbitration, joint development, maritime boundaries, maritime borders, South China Sea			**15. NUMBER OF PAGES** 149
			16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT Unclassified	**18. SECURITY CLASSIFICATION OF THIS PAGE** Unclassified	**19. SECURITY CLASSIFICATION OF ABSTRACT** Unclassified	**20. LIMITATION OF ABSTRACT** UU

NSN 7540–01–280–5500 Standard Form 298 (Rev. 2–89) Prescribed by ANSI Std. 239–18

THIS PAGE INTENTIONALLY LEFT BLANK

Approved for public release; distribution is unlimited

SAILING THE CALM AND ROUGH SEAS: THE INFLUENCE OF WEALTH AND SOVEREIGNTY IN SOUTHEAST ASIAN MARITIME DISPUTES

Andromeda Windra Ciptadi
Lieutenant, Indonesian Navy
Indonesian Naval Academy, 2006

Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(FAR EAST, SOUTHEAST ASIA, THE PACIFIC)**

from the

**NAVAL POSTGRADUATE SCHOOL
March 2016**

Approved by: Dr. Michael S. Malley
Thesis Advisor

Dr. Daniel Moran
Second Reader

Dr. Mohammed Hafez
Chair, Department of National Security Affairs

THIS PAGE INTENTIONALLY LEFT BLANK

ABSTRACT

Under what conditions do the Association of Southeast Asian Nations members use peaceful means to resolve their maritime disputes? Why do they resort to military action in some cases, and compromise peacefully in others? This thesis answers these questions by investigating two variables that influence the course of such disputes: the presence of natural resources and disputes over sovereign control of maritime features. This thesis examines four cases of maritime dispute resolution: maritime delimitation in the Singapore Strait by Indonesia and Singapore; joint-development in the Gulf of Thailand; the Pedra Branca dispute between Singapore and Malaysia; and recurring violence in the South China Sea, involving multiple states in the region.

After analyzing the case studies, this research finds that the presence of natural resources, and of conflicting claims of sovereignty over islands or other related features, strongly affect the outcome of the maritime disputes. In general, four different outcomes are possible: maritime delimitation, joint development, third-party settlement, and violent conflict. Southeast Asian countries are likely to employ peaceful measures in a situation where at least one of the two variables studied here is absent. If both of them are present, maritime disputes will likely end in violence.

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

LIST OF FIGURES

THIS PAGE INTENTIONALLY LEFT BLANK

LIST OF TABLES

THIS PAGE INTENTIONALLY LEFT BLANK

LIST OF ACRONYMS AND ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
APSC	ASEAN Political And Security Community
ARF	ASEAN Regional Forum
CJAA	Commercial Joint Arrangement Area
DA	Defined Area
DOC	Declaration on the Conduct of Parties in the South China Sea
EEZ	Economic Exclusive Zone
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
ICJ	International Court of Justice
JMSU	Joint Marine Seismic Undertaking
ITLOS	International Tribunal for the Law of the Sea
LNG	Liquefied Natural Gas
MOU	Memorandum of Understanding
MSPP	Malacca Strait Sea Patrol
MTJA	Malaysia-Thailand Joint Authority
MTJDA	Malaysia-Thailand Joint Development Area
NATO	North Atlantic Treaty Organization
PCA	Permanent Court of Arbitration
PSC	Production Sharing Contract
PTP	Port of Tanjung Pelepas
TEU	Twenty-Foot Equivalent Unit
UNCLOS	United Nations Convention on the Law of the Sea
WWII	World War II

THIS PAGE INTENTIONALLY LEFT BLANK

ACKNOWLEDGMENTS

First and above all, I praise Allah SWT, the almighty God, who has given me the strength and courage to complete this thesis on time. I would also like to express my gratitude to Prophet Muhammad (PBUH) for being my constant source of guidance throughout the entire process of this research.

I am surely indebted to all who have helped me to complete this project, which would have been near-impossible without their assistance. This acknowledgment is the only thing I can give sincerely for all who have made invaluable contributions to me during the writing of this thesis.

To Professor Michael Malley, my advisor, thank you for being my great advisor. Since the beginning, your thoughts have helped me a lot in figuring out the flow of this thesis. As you are an expert in Southeast Asia, the knowledge I got from our discussions really shaped my thoughts, which are reflected into the string of words in this thesis. Your patience when correcting my grammar from the onset was very meaningful for me. I learned a lot from you during my entire time studying Southeast Asia at the Naval Postgraduate School.

To Professor Daniel Moran, my second reader, I would like to say thank you for your valuable comments. Your critical insights always gave me alternative perspectives for the issues I discuss in this thesis.

To my parents, Sutjipto and Sri Windrati, no one in this world could replace your eternal support. Your prayers from Indonesia have always given additional energy and inspiration to me to complete this final work.

To my wife, Amanda, thank you for your understanding in allowing me to prioritize my time for this thesis rather than helping you by being a husband and father at home. To my princess, Axelle, and my superhero, Califf, your laughter, crying, and cuteness were my stress reliever when I experienced “blank screen” syndrome.

Last, with my deepest gratitude I address all the faculty members who taught me at the Naval Postgraduate School, my favorite coaches at the Graduate Writing Center,

Marianne Taflinger and Jean Vengua, my editor John Locke, the supportive Dudley Knox Library staff, the Thesis Processing Office, the International Graduate Program Office staff, and all of my friends. Without your support and encouragement, this thesis would never be realized. May we meet again!

I. INTRODUCTION

A. MAJOR RESEARCH QUESTION

Southeast Asia is considered a peaceful region due to the absence of major conflict there since the Cambodian-Vietnamese War in the late 1970s. One factor that has maintained peace among Southeast Asian states is the Association of Southeast Asian Nations (ASEAN), which has developed key norms in resolving disputes, namely "settlement of differences or disputes by peaceful means," and "renunciation of the threat or use of force" in the Treaty of Amity and Cooperation (TAC).[1] However, since the establishment of the TAC in 1976, there have been serious tensions, mainly border disputes, among ASEAN members that have harmed the spirit of peace in Southeast Asia. The most prominent conflict between the TAC signatories is the Preah Vihear Temple dispute along Cambodian-Thai border, 2008–2011, during which troops from both sides clashed, resulting in at least 36 deaths, hundreds wounded, and thousands displaced.[2] On the maritime side, the overlapping claims over features in the South China Sea attract the world's attention.

The Malaysian scholar Joon Nam Mak has argued that ASEAN members adhere to the TAC norms of peaceful dispute resolution and the non-use of force in land-border disputes but not in maritime ones.[3] This argument is subject to debate since most maritime border disputes have been managed peacefully, even though several of them involved military power. Some of the peaceful resolutions among ASEAN members in resolving maritime border disputes are Malaysia-Thailand's agreement of joint-development in the Gulf of Thailand in 1979, Myanmar-Thailand's maritime boundary agreement in the Andaman Sea in 1980, a joint-development agreement between

---

[1] "Treaty of Amity and Cooperation in Southeast Asia," accessed January 21, 2016, http://agreement.asean.org/media/download/20131230235433.pdf.

[2] Kathy Quiano, "Thailand, Cambodia Make Progress on Border Dispute," CNN.com, accessed May 21, 2015, http://www.cnn.com/2011/WORLD/asiapcf/05/09/thailand.cambodia.dispute/.

[3] Joon Nam Mak, "Sovereignty in ASEAN and the Problem of Maritime Cooperation in the South China Sea," in *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime*, ed. W. S. G. Bateman and Ralf Emmers, Routledge Security in Asia Pacific Series 9 (London: Routledge, 2009), 112.

Malaysia and Vietnam in the Gulf of Thailand in June 1992, and Thailand-Vietnam's EEZ agreement in the Gulf of Thailand in 1997.[4] These circumstances motivate this thesis to argue that Mak's opinion, which states that TAC norms do not apply in the maritime realm, is not correct since there are so many cases of peaceful resolution. ASEAN members do not resolve all maritime disputes peacefully, however. They have militarized disputes over some territories, such as the Ambalat region east of Borneo and the Spratly region in the South China Sea. Thus, the question this thesis aims to answer is: when do ASEAN members follow or not follow TAC norms in maritime border disputes?

B. SIGNIFICANCE OF THE RESEARCH QUESTION

The stability of the region is absolute in establishing the ASEAN Political Security Community (APSC), one of the three pillars of ASEAN Community. This lofty goal relies heavily on the TAC as "the key code of conduct" governing relations between ASEAN members for the promotion of peace and stability in the region.[5] Having the TAC as a general guidance for dispute resolution, ASEAN members are still involved in disputes over land and maritime borders, which could hamper the realization of the APSC. The security community will not be entirely established as long as ASEAN members still live in suspicion of each other. The fact that there are still many disputes over the boundaries could destabilize the region, since territorial disputes can lead to a war.[6]

It is important to know the situations that influence ASEAN members to take either peaceful or violent responses. Understanding maritime conflict management between Southeast Asian countries would help us to explain the conditions under which ASEAN members uphold or violate their own norms. Moreover, by knowing the

---

[4] Ramses Amer, "Managing Border Disputes in South East Asia," *Kajian Malaysia* 18, no. 1 and 2 (2000): 33–4.

[5] Daniel Seah, "The Treaty of Amity and Cooperation in Southeast Asia: The Issue of Non-Intervention and Its Accession by Australia and the USA," *Chinese Journal of International Law* 11, no. 4 (2012): 792.

[6] John Vasquez and Marie T. Henehan, "Territorial Disputes and the Probability of War, 1816-1992," *Journal of Peace Research* 38, no. 2 (March 1, 2001): 136, doi:10.2307/425491.

tendency of a country's behavior, it would help policymakers and scholars predict the possible outcomes of maritime disputes in Southeast Asia and take necessary actions to prevent conflict escalation.

C. LITERATURE REVIEW

This section will review key literature including books, articles, and some treaties to provide enough background relating to the border disputes and Southeast Asian conflict management. First, the literature review discusses the previous research about border disputes. Previous research concurs that two factors caused countries to either peacefully settle or enter armed conflict: the value of the disputed areas, either tangible or intangible, and domestic political factors. This section will then discuss the historical background of maritime boundaries in Southeast Asia. Finally, this literature review provides a summary of the two competing perspectives in Southeast Asian literature between those who believe that TAC norms contribute to the peaceful resolution of maritime territorial disputes and those who argue that TAC norms fail to prevent the use of force to resolve those disputes. This literature review includes some brief reviews of resolved and ongoing maritime disputes to provide a big picture of maritime disputes in Southeast Asia.

1. Theories of Border Disputes

Borders define a territory of a country to exercise its sovereignty over domestic affairs from intervention of other countries. In the world, there are 300 land boundaries and 130 maritime boundaries that separate more than 200 countries.[7] The Westphalian concept of sovereignty shapes national pride and economic interest, which are common reasons to justify the use of forces in territorial disputes. However, few conflicts have been resolved through military action, as described by Paul R. Hensel's data of 191 dyadic territorial claims across the world. Hensel's data shows that those "claims have

[7] Rongxing Guo, *The Land and Maritime Boundary Disputes of Asia, Asian Political, Economic and Security Issues Series* (New York: Nova Science Publishers, 2009), 5.

been managed through 205 militarized interstate disputes and 1004 peaceful settlement attempts."[8]

Many experts in territorial disputes have tried to explain why a country chooses either a peaceful or militarized approach to resolving territorial conflicts. Most of them find that this choice is influenced by the value of the territory and by domestic political factors. A territory can have both tangible and intangible values that motivate a state to claim it and to engage in disputes over it. Tangible value includes economic resources and strategic value, whereas examples of intangible value are historical status and national pride. John Vasquez states that the disputes over tangible-valued areas are likely to be resolved by peaceful means and less frequently involve the use of military forces.[9] Comparing economic and strategic value, Paul Huth finds that strategic disputed areas lead states to take military action, unlike in resource-rich areas.[10] Furthermore, Hensel and Sara McLaughlin Mitchell say that armed conflict is more likely to occur in a dispute over areas that have intangible value related to ethnic origin or homeland territory.[11] Various arguments about the tendency of a country's behavior in relations with the value of the territory means that this field still needs further investigation to have a universal explanation.

The second common explanation for a country's behavior in dealing with a territorial dispute is a domestic political one. Scholars make several different arguments. The first is that leaders are unwilling to make unpopular decisions, either engaging in wars or avoiding wars, with political risks. A study by Giacomo Chiozza and Henk E. Goemans concludes that leaders will not initiate an international crisis in exchange for

---

[8] Paul R. Hensel, "The ICOW Territorial Claims Data Set," ICOW Project, accessed May 19, 2015, http://www.paulhensel.org/icowterr.html.

[9] John A Vasquez, *The War Puzzle* (Cambridge; New York: Cambridge University Press, 1993), 77–8, http://site.ebrary.com/id/10450863.

[10] Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 1996), 147–8.

[11] Paul R Hensel and Sara McLaughlin Mitchell, "Issue Indivisibility and Territorial Claims," *GeoJournal* 64, no. 4 (2005): 283, doi:10.1007/s10708-005-5803-3.

their position.[12] Military action causes huge political risks for the leaders as wars might cost severe loss of materials without any guarantee of winning. On the contrary, Huth finds that political leaders will not give up territory to avoid political attack from the opposition.[13] His argument comes from the notion of sovereignty, which is often considered by domestic political actors as a manifestation of national pride that is worthwhile to pursue. A second argument is that leaders may use disputes to increase their popularity at home and gain political support. In support of this argument, Jaroslav Tir says that the choice of engaging in armed conflict is more likely for leaders that face domestic problems.[14] The investigation using this lens in examining Southeast Asian maritime border disputes might account for broader factors in domestic politics.

2. Historical Background

At the end of the colonial era in Southeast Asia post-WW II, states followed the principle of *uti possidetis juris* ("as you possess under law") to determine their borders. This means that their borders are based on what they inherited from their former colonizers.[15] The region does not consist of a set of ethno-states or follow the principle of *terra nullius* ("uninhabited territory").[16] All Southeast Asian countries except Thailand were colonies of the Western countries, and gained their independence in the mid-twentieth century in the aftermath of World War II. Even though Thailand was never formally colonized, its borders are defined by surrounding states, which are the result of colonization. Indonesia's territory from Sabang to Merauke was a former Dutch colony, initially many different kingdoms spread throughout the archipelago. Spain's colony, later succeeded by the United States, was the Philippines. The French and British dominated mainland Southeast Asia before the end of WWII, resulting in the

[12] Giacomo Chiozza and Henk E. Goemans, "Avoiding Diversionary Targets," *Journal of Peace Research* 41, no. 4 (2004): 439, doi:10.2307/4149682.

[13] Huth, *Standing Your Ground*, 178–9.

[14] Jaroslav Tir, "Territorial Diversion: Diversionary Theory of War and Territorial Conflict," *The Journal of Politics* 72, no. 2 (2010): 419, doi:10.1017/S0022381609990879.

[15] Mak, "Sovereignty in ASEAN," 10.

[16] David B. Carter and H. E. Goemans, "The Making of the Territorial Order: New Borders and the Emergence of Interstate Conflict," *International Organization* 65, no. 2 (2011): 286, doi:10.1017/S0020818311000051.

independence of Laos, Cambodia, and Vietnam. The British also granted independence to Malaysia, Singapore, and later Brunei Darussalam. These newly formed states inherited relatively clear land territories without clear maritime boundaries.

The first claim of national sovereignty on the sea was in 1945, when U.S. President Harry S. Truman asserted United States sovereignty over natural resources on its continental shelf, a landmass beneath the sea.[17] There were sporadic claims by countries around the world following the United States' declaration of its own rights on the sea, especially motivated by economic and sovereignty factors. Stimulated by potential disputes that might worsen the exploitation of the sea, UN conventions managed to formulate and finalize the Law of the Sea in the third convention in 1982, which was enforced in 1994 after the 60th country signed the treaty.[18] The treaty adopts the 1958 Convention on the Continental Shelf that governs international law relating to continental shelves. All coastal ASEAN members have ratified the United Nations Convention on the Law of the Sea (UNCLOS).

Scholars differ in perceiving the adoption of new international laws like Economic Exclusive Zone (EEZ) and UNCLOS in relations with interstate disputes. The first perspective argues that the adoption of EEZ and UNCLOS could promote cooperation and stability. A quantitative study from Stephen C. Nemeth et. al., which observed "peaceful and militarized maritime claims in the Western Hemisphere and Europe" from 1900 to 2001, concludes that privatization of the sea through the adoption of EEZs has bolstered peaceful resolution through bilateral negotiations.[19] Further, they state, "UNCLOS is also effective for preventing the onset of new disagreement over maritime areas."[20]

---

17 "The United Nations Convention on the Law of the Sea: A Historical Perspective," United Nations, accessed September 28, 2015, http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm.

18 Ibid.

19 Stephen C. Nemeth et al., "Ruling the Sea: Managing Maritime Conflicts through UNCLOS and Exclusive Economic Zones," *International Interactions* 40, no. 5 (2014): 732, doi:10.1080/03050629.2014.897233.

20 Ibid.

The second camp sees that the adoption of new rules could potentially bring out new disagreements due to misconception of the rules. Prescott and Schofield state that disputes over maritime boundaries are more likely because of the absence of colonial-era lines defining maritime borders.[21] Data from Prescott and Schofield show that 259 or 58% of maritime boundaries in the world do not have formal agreements and are subject to dispute.[22] The different interpretation of the rules may cause disputes because "under UNCLOS, entitlement to maritime zones is generated only by land territory, including islands"; however, UNCLOS does not address the issue of sovereignty over land territory.[23] Prescott and Gillian D. Triggs write that there are two possible aims in which countries initiate territorial disputes, namely to strengthen the state by adding new territories, or as a diversionary strategy related to their domestic or foreign policy.[24] In addition, causal factors of maritime disputes in Southeast Asia, as Lawrence Prabhakar mentions, include sovereignty concerns, national identity, and resources management.[25]

3. Competing Resolution Perspectives in ASEAN

There are two perspectives about the role of ASEAN in creating the stability of Southeast Asia. One side argues that ASEAN works well in preventing conflict escalations, whereas the other side claims that ASEAN and its regional mechanism are less effective for creating a peaceful region. Both camps bring their own arguments to analyze the dynamics of Southeast Asian international relations.

Some scholars argue that the nature of the disputes in Southeast Asia is limited to low-intensity conflicts. Major territorial conflicts tend not to occur in the Southeast Asian region. Prabhakar argues that conflicts in the region never escalate because ASEAN

---

21 Victor Prescott and Clive Howard Schofield, *The Maritime Political Boundaries of the World*, 2nd ed (Leiden ; Boston: M. Nijhoff, 2005), 215–6.

22 Ibid., 245.

23 Robert Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea," *American Journal of International Law* 107, no. 1 (2013): 142.

24 Victor Prescott and Gillian D. Triggs, *International Frontiers and Boundaries* (Leiden ; Boston: Martinus Nijhoff Publishers, 2008), 99.

25 W. Lawrence S. Prabhakar, "The Regional Dimension of Territorial and Maritime Disputes in Southeast Asia," in *Maritime Security in Southeast Asia*, ed. Kwa Chong Guan and John K. Skogan, Routledge Security in Asia Series 4 (London ; New York: Routledge, 2007), 35.

manages to address the disputes "through conflict management, with an emphasis on the processes of conflict avoidance, prevention, and eventual conflict resolution."[26] The relative peace of Southeast Asia can be understood from several supporting factors. The analysis of Nemeth et. al. shows that the adoption of the UNCLOS and EEZs could explain the pacification of Southeast Asia.[27] All of the nine ASEAN members—excluding Laos, which is landlocked—have ratified the UNCLOS.[28] In addition, Southeast Asian countries are bound within ASEAN, a regional institution aiming to promote regional stability. In anticipating the possibility of ASEAN members engaging in inter-state disputes, ASEAN provides rules about ways to resolve conflicts peacefully: the TAC. This treaty guides its signatories to settle differences by peaceful means and refuse to use force to resolve disputes.[29] In case a dispute emerges, disputing parties should cooperate in friendly negotiations.[30]

This TAC is claimed to be the application of the "ASEAN Way" in creating a peaceful region. Shaun Narine posits that the ASEAN approach is the key to a peaceful region.[31] Amitav Acharya further explains the ASEAN way as a part of ASEAN socio-cultural norms. According to him, the ASEAN way is a pattern of consultation and consensus building among ASEAN members in resolving problems.[32] This mechanism ultimately creates what Soeharto called "regional resilience," which contributes to

---

[26] Ibid., 34.

[27] Nemeth et al., "Ruling the Sea," 732.

[28] "Chronological Lists of Ratifications Of, Accessions and Successions to the Convention and the Related Agreements as at 3 October 2014," United Nations, January 7, 2015, http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm.

[29] "Treaty of Amity and Cooperation," article 2.

[30] Ibid., article 13.

[31] Shaun Narine, "The English School and ASEAN," *The Pacific Review* 19, no. 2 (2006): 203–4, doi:10.1080/09512740500473247.

[32] Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, 2nd ed, Politics in Asia Series (Milton Park: Routledge, 2009), 24.

security for the ASEAN members.[33] "The ASEAN way," Collins adds, "managed to contain some problems faced by the members from further escalated tensions."[34]

However, some skeptical scholars question the role of ASEAN in establishing regional stability. Dewi Fortuna Anwar doubts ASEAN members regard ASEAN as their top priority. According to her, the existence of ASEAN is only to support national interests, thus ASEAN is placed after national preference.[35] She argues that peaceful coexistence in Southeast Asia is sometimes interrupted by small disputes, as Southeast Asian members have experienced frequently. There are several instances in which ASEAN members have been involved in disputes, especially concerning territorial borders. An example of territorial conflict among ASEAN members is the dispute over the Preah Vihear temple between Thailand and Cambodia. In the maritime realm, the conflicts in the South China Sea underline the fact that the complexities of defining sea boundaries might exacerbate rivalry between countries. Indonesia, Malaysia, and Singapore demonstrate that the close relations between them do not prevent them from sea border disputes over Ambalat and Pedra Branca. Hari Singh further judges that Southeast Asian states see their neighbors as potential adversaries rather than friends in a security community.[36]

Those scholars highlight the tendency of ASEAN members to engage in border disputes, showing that countries may choose not to follow the TAC norms of peaceful dispute resolution and non-use of force, despite their frequent statements of support for those norms. Mak notes that the TAC is merely useful in handling land disputes but not maritime ones.[37] He claims that ASEAN uses a double standard in conflict management; for example, ASEAN condemned Vietnam's invasion of Cambodia, but then took no

---

[33] Alan Collins, *The Security Dilemmas of Southeast Asia* (Basingstoke: Macmillan, 2000), 113.

[34] Alan Collins, *Security and Southeast Asia: Domestic, Regional, and Global Issues* (Boulder: Lynne Rienner Publishers, 2003), 133–7.

[35] Dewi Fortuna Anwar, "Indonesia: National vs Regional Resilience," in *Southeast Asian Perspectives on Security*, ed. Derek Da Cunha (Singapore: Institute of Southeast Asian Studies, 2000), 92.

[36] Hari Singh, "Vietnam and ASEAN: The Politics of Accommodation," *Australian Journal of International Affairs* 51, no. 2 (1997): 226, doi:10.1080/10357719708445211.

[37] Mak, "Sovereignty in ASEAN," 1–2.

stance over China's occupation of Mischief Reef, a feature that the Philippines claims in the South China Sea.[38] To support his argument, Mak provides instances of militarized disputes that involve ASEAN forces in challenging other members in maritime conflicts, such as several aggressive actions by Malaysia in the South China Sea occupying features by using naval task forces, and the contestation between Indonesia and Malaysia over Sipadan and Ligitan islands.[39] He argues that Southeast Asian members do not obey the TAC in maritime disputes, contrary to their behavior in land border problems, because "the maritime realm [is] different from the terrestrial realm," because in maritime areas "sovereignty is still highly contested."[40]

4. Peaceful Conflict Management of Maritime Disputes in Southeast Asia

Not all disagreements between ASEAN members are solved in contentious ways. The use of military force to resolve maritime territorial disputes in Southeast Asia is only one possibility. History reveals that most disputes, including maritime disputes, are solved or managed peacefully. In fact, Southeast Asian countries have taken three different types of peaceful approaches to maritime disputes. The first two result in the delimitation of borders. One is bilateral negotiation between the parties to the dispute. The second is the submission of conflicting claims to international bodies, such as the International Court of Justice, for adjudication. The third approach is the joint development of resources in disputed areas, but unlike the first two this approach does not lead to the delimitation of new borders.

ASEAN members have demonstrated peaceful settlement of maritime disputes through bilateral agreements that result in agreed upon delimitation of boundaries. In 1969, Indonesia and Malaysia negotiated their first maritime boundary agreement, in which they agreed to the delimitation of their continental shelf in the Strait of Malacca

[38] Ibid., 14–5.

[39] Ibid., 5–8.

[40] Ibid., 22.

and the South China Sea.[41] In the following year, both neighboring countries agreed to their territorial sea limit in the Strait of Malacca. In 1974, Indonesia and Singapore reached an agreement delimiting their three-mile lines in the Strait of Malacca and Singapore.[42] Malaysia and Thailand have also compromised their territorial sea limit in the Strait of Malacca and the Gulf of Thailand in 1979.[43] Later, Thailand and Vietnam agreed to the delimitation of their EEZ and continental shelf boundaries in the Gulf of Thailand in 1997.[44] All of these agreements contain an article that obliges the signatories to resolve any future dispute peacefully.[45] These articles demonstrate the influence of the ASEAN way on ASEAN members, since they agreed among themselves to peaceful settlements through consultation or negotiation.

The cases of Sipadan Ligitan and Pedra Branca are the only examples of maritime disputes in South East Asia that have been settled through the ICJ. Indonesia and Malaysia brought the dispute over the islands of Sipadan and Ligitan to the ICJ in 1999 after suspending negotiations over the boundary in the area that had continued since 1969.[46] The court then awarded the islands in favor of Malaysia on December 17, 2002, on the basis of the *effectivité*, because Malaysia had proven its occupation in the islands more effectively than Indonesia.[47] For the Pedra Branca dispute, the ICJ made decisions over sovereignty of the three islands in the Strait of Malacca: Pedra Branca, Middle Rocks, and South Ledge. The disputes over those islands arose in 1979 when Malaysia

41 Jonathan I. Charney and Lewis M. Alexander, eds., *International Maritime Boundaries*, vol. 1 (Dordrecht: Martinus Nijhoff Publishers, 1993), 1019–27.

42 Ibid., 1:1049–52.

43 Ibid., 1:1091–8.

44 Amer, "Managing Border Disputes," 34.

45 Charney et al., *International Maritime Boundaries*, 1:1036. 1097, and 1106.

46 John G. Butcher, "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 35, no. 2 (2013): 237–8.

47 "Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia): Judgment of 17 December 2002" (Hague: International Court of Justice, 2002), 685–6, http://www.icj-cij.org/docket/files/102/7714.pdf.

published its new map, *Peta Baru*.[48] In 1998, both governments agreed to submit this dispute to the ICJ. In 2008, the court determined that Singapore has sovereignty over Pedra Branca, but sovereignty over Middle Rocks lies with Malaysia, whereas who owns South Ledge was not specifically decided.[49] The same effort is being conducted by the Philippines responding to the aggressiveness of China. The Philippines submitted its disputes with China to UNCLOS arbitration on January 22, 2013, which was opposed by China.[50]

Not all maritime disputes reach peaceful resolution, but not all unsettled disputes end in violence either. Joint development over a contested area is one possible alternative taken by Southeast Asian countries, which is demonstrated in the Gulf of Thailand by Malaysia, Thailand, and Vietnam. Following the agreement over their territorial sea borders, Malaysia and Thailand agreed "to establish a joint authority for the exploitation of resources in a defined area" in the Gulf of Thailand by signing a Memorandum of Understandings.[51] In 1992, Vietnam followed by signing an agreement with Malaysia to engage in joint exploitation of their overlapping continental shelves.[52]

The three types of friendly approaches in resolving maritime disputes made by ASEAN members show that they are likely to resolve their disputes in peaceful ways; bilateral agreement is the most preferred option among them. Nevertheless, sometimes two-sided discussion cannot resolve the problems easily. Damon Bristow argues that polarized opinion over sensitive national issues prevents ASEAN members from entering

---

48 Robert Beckman and Clive Howard Schofield, "Moving Beyond Disputes Over Island Sovereignty: ICJ Decision Sets Stage for Maritime Boundary Delimitation in the Singapore Strait," *Ocean Development & International Law* 40, no. 1 (2009): 3, doi:10.1080/00908320802631551.

49 International Court of Justice, "Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore): Summary of the Judgement of 23 May 2008," June 23, 2008, 13, http://www.icj-cij.org/docket/files/130/14506.pdf.

50 Permanent Court of Arbitration, "The Republic of Philippines v. The People's Republic of China," accessed May 19, 2015, http://www.pca-cpa.org/showpage.asp?pag_id=1529.

51 Charney and Alexander, *International Maritime Boundaries*, 1993, 1:1107–23.

52 Amer, "Managing Border Disputes," 33.

into binding bilateral treaties.[53] Moreover, he adds that ASEAN is not like NATO or the EU in influencing its members; the nature of ASEAN as a loose institution gives it less clout to force its members to conduct bilateral meetings.[54] Robert Beckman and Clive Schofield highlight the importance of national politics, which they suggest often become barriers in achieving bilateral agreements.[55] Indonesia and Thailand have become the top two settled-boundary countries because the two countries are more willing than the others to bring their problems into formal resolutions.[56]

These arguments, then, suggest the need for third-party settlements. Many scholars criticize the involvement of the ICJ in ASEAN members' conflict resolutions as it indicates some missing mechanism within ASEAN. Ramses Amer proposes the establishment of the High Council as mandated by the TAC and the integration of all ASEAN members into conflict management to prevent ASEAN members from submitting their disputes to outsiders.[57] However, he is one of the optimists in viewing ASEAN boundary disputes; he suggests that the problems of border disputes among Southeast Asian countries are tending towards resolution of border conflicts.[58]

D. POTENTIAL EXPLANATIONS AND HYPOTHESES

There are four types of maritime border dispute resolution in Southeast Asia. One is military and potentially violent, and the others are peaceful: bilateral border negotiations, joint-development of resources in disputed territories, and international courts or tribunals. This thesis argues that such outcomes were mainly influenced by economic values of the disputed areas and sovereignty status of the islands or maritime

---

53 Damon Bristow, "Between the Devil and the Deep Blue Sea: Maritime Disputes between Association of South East Asian Nations (ASEAN) Member States," *The RUSI Journal* 141, no. 4 (August 1, 1996): 36, doi:10.1080/03071849608446047.

54 Ibid., 35.

55 Beckman and Schofield, "Moving Beyond Disputes Over Island Sovereignty," 26.

56 Ramses Amer, "Expanding ASEAN's Conflict Management Framework in Southeast Asia: The Border Dispute Dimension," *Asian Journal of Political Science* 6, no. 2 (December 1998): 43, doi:10.1080/02185379808434124.

57 Ibid., 48.

58 Ibid., 42–3.

features related to the disputed seas. The record of disputed seas in Southeast Asian region related to their economic value and land status is shown in Table 1.

Table 1. List of Disputed Seas and Maritime Delimitations in Southeast Asia.

No.	Disputed seas	Economic value (Hi/Lo)	Sovereignty status (Clear/Unclear)
1.	Andaman Sea	Hi	Clear
2.	Andaman Sea west of Pakchan River	Lo	Clear
3.	Northern Strait of Malacca	Hi	Clear
4.	Strait of Malacca	Lo	Clear
5.	Strait of Johor	Lo	Clear
6.	Strait of Singapore	Lo	Clear
7.	Eastern Strait of Singapore	Lo	Unclear
8.	Indian Ocean (Northern Christmas Island)	Lo	Clear
9.	Indian Ocean (around Andaman basin)	Lo	Clear
10.	Gulf of Thailand	Hi	Clear
11.	Southern South China Sea	Hi	Clear
12.	South China Sea	Hi	Unclear
13.	Sulu Sea	Hi	Clear
14.	Celebes Sea	Hi	Unclear
15.	Pacific Ocean	Lo	Clear
16.	Arafura Sea	Lo	Clear
17.	Timor Sea	Hi	Clear
18.	Banda and Sawu Sea	Lo	Clear

Adapted from: Charney and Alexander, *International Maritime Boundaries*, vols. 1 and 2; Vivian Louis Forbes, *Indonesia's Delimited Maritime Boundaries* (London: Springer, 2014); and R. Haller-Trost, *The Contested Maritime and Territorial Boundaries of Malaysia* (London: Kluwer Law International, 1998).

The observation over maritime border disputes in Southeast Asia suggests that tangible value is a more important incentive for countries in disputing some portion of waters than intangible value. The intangible value becomes more critical when driven by domestic politics, as in the Ambalat case. The land status, which is used for baselines or basepoints in the delimitation of disputed waters, serves as the second important factor. Baselines from a clear land status inherited from colonial era will likely result in peaceful

settlement, whereas unclear land or island status will likely drive the disputants into violent disputes.

From that explanation, this thesis has developed four hypotheses to explain each dispute resolution. First, disputed waters with lack of natural resources derived from clear inherited baselines will likely be resolved in bilateral agreement that ends up mostly on clear delimitation. Second, resource-rich disputed waters stretched from clear land boundaries will also be settled in bilateral agreement with the possibility of joint-development. Third, countries will likely seek solution from a third party like the ICJ in resolving disputes over waters that lack resources and clear inherited borders. Fourth, countries will likely be more aggressive in defending claims over resource-rich areas without clear sovereignty inherited from colonial powers. These four hypotheses underline the importance of the legal status of the land or islands in determining maritime boundaries. Because Southeast Asian countries adopt the principle of *uti possidetis juris*, the behavior of *terra nullius* over unclear islands makes dispute resolutions more complex with a greater likelihood of using military power.

E. RESEARCH DESIGN

This thesis will examine both peaceful and militarized disputes in Southeast Asia that involve Southeast Asian countries as well as China. The thesis will use the comparative study method by analyzing a set of case studies of border disputes in Southeast Asia. A case study is the best way to discuss the topic because it provides concrete examples of maritime disputes in the region and it allows using "multiple methods and data sources to explore it and interrogate it."[59] Given this method, this thesis uses qualitative historical study of the selected case studies. The purpose of this research method is to achieve a rich description of the Southeast Asian maritime dispute phenomena, which might further be applied to the other disputes. The thesis organizes the discussion of the case studies into four different dispute resolutions: bilateral agreement,

[59] Sheila Stark and Harry Torrance, "Case Study," in *Research Methods in the Social Sciences*, ed. Bridget Somekh and Cathy Lewin (London: SAGE Publications, 2005), 33.

joint-development, third-party settlement through international arbitration, and violent action.

This thesis will discuss the maritime delimitation agreement between Indonesia and Singapore in the Singapore Strait as the first case study. This case study is a good example of disputes over resource-scarce seas with a clear legal status of islands that resulted in clear delimitation. The joint development arrangements in the Gulf of Thailand practiced by Malaysia, Thailand and Vietnam are discussed as the next case study. The third case study is a dispute over Pedra Branca island between Singapore and Malaysia that ended up to the ICJ decision. It is a good example of an alternative solution over invaluable waters and unclear islands. The last case study is the South China Sea disputes, an area believed to be resource-rich, which attracts several ASEAN members and China. This area has attracted international attention with the involvement of China, which asserts its claim without regarding other claimants' proposals.

The purpose of this thesis is not to deeply analyze each case study from a legal perspective; it will merely focus on what is behind each decision-making process. Each case study will be analyzed using two variables: the value of the disputed waters and the sovereignty status of the land or islands when the disputes emerged. This thesis will follow what Prescott and Triggs suggest in every analysis of boundary disputes.[60] Each case will be analyzed based on information available on four aspects, namely the cause of the disputes, the trigger actions, the strongest arguments, and the result of the actions taken. The analysis of these variables will conclude the case studies into the hypotheses.

For the data source to support the analysis, this thesis will use both primary and secondary sources. Primary source documents like the ASEAN charter, the TAC, the UNCLOS, and all available agreements and treaties between contracting parties, will establish the empirical basis of this thesis. To support the primary sources, secondary sources such as scholarly journals and commentary from credible news organizations will be used to provide a complete and up-to-date picture of the interactions between the disputants.

---

[60] Prescott and Triggs, *International Frontiers and Boundaries*, 91–3.

F. THESIS OVERVIEW AND DRAFT CHAPTER OUTLINE

This thesis is organized into six chapters. Chapter I provides the general overview of the thesis, theoretical foundations, as well as reviews of the maritime disputes and conflict management in Southeast Asia from credible scholars. Chapter II discusses peaceful resolutions of the maritime disputes by addressing the case studies of the maritime delimitation between Indonesia and Singapore in the Singapore Strait. Chapter III addresses peaceful resolution in a form of joint development by examining the Gulf of Thailand case. Chapter IV examines the disputes between Singapore and Malaysia over Pedra Branca islands to analyze when countries seek a third party's help in solving their problems. Chapter V concentrates the discussion over the South China Sea disputes. Chapter VI is the conclusion. It summarizes the result of analysis of the case studies and synthesizes the pattern of the Southeast Asian countries' behaviors.

THIS PAGE INTENTIONALLY LEFT BLANK

II. DELIMITATION ARRANGEMENTS

Delimitation arrangement through a bilateral agreement is the most common approach to Southeast Asian maritime disputes. From a meticulous observation of maritime disputes in Southeast Asia, 30 cases were solved through bilateral negotiations resulting in clear maritime delimitation. These agreements varied in terms of the types of the delimitation as well as the delimitation methods. Before discussing the case studies, this chapter will examine the types and methods of maritime delimitation. The general pattern of the maritime delimitation arrangements in Southeast Asia is that they deal with a portion of waters that lack natural resources and they are drawn from indisputable baselines. These two factors will be discussed in the case study of delimitation agreement between Indonesia and Singapore in the Singapore Strait. However, not all delimitation agreements cover resource-poor areas. The last section will address this exception by examining factors that drove Southeast Asian countries to agree to maritime delimitation in waters that could result in conflict.

A. OVERVIEW OF MARITIME DELIMITATION ARRANGEMENTS IN SOUTHEAST ASIA

The delimitation arrangements of Southeast Asian maritime areas have been made since 1969, when Indonesia and Malaysia had agreed upon delimitation over their continental shelf in the Straits of Malacca, East Natuna Sea, and West Natuna Sea. Because at that time the 1982 UNCLOS was not yet discussed, the participation of both countries in the 1958 Convention on the Continental Shelf underlay this agreement.[61] Since then, subsequent agreements followed the 1969 Indonesia-Malaysia Continental Shelf Agreement. Not only the continental shelf, Southeast Asian countries also agreed to the territorial sea delimitation even though global agreement about the breadth of the territorial sea was not yet concluded. Indonesia, Malaysia, Thailand, and Myanmar were among the states that have claimed 12 nautical-mile territorial seas following the failure of the 1960 Conference on the Law of the Sea in deciding the breadth of the territorial

61 "Convention on the Continental Shelf," United Nations Treaty Collection, accessed July 23, 2015, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-4&chapter=21&lang=en.

sea.[62] In total, 30 maritime delimitation agreements have been concluded by Southeast Asian countries and neighboring countries over Southeast Asian waters. The list of the delimitation arrangements can be seen in Table 2.

Table 2. List of Delimitation Arrangements in Southeast Asian Waters.

No.	Year	Countries	Area	Type of Delimitation
1.	1969	Indonesia, Malaysia	Straits of Malacca West Natuna Sea East Natuna Sea	Continental Shelf
2.	1970	Indonesia, Malaysia	Straits of Malacca	Territorial Sea
3.	1971	Indonesia, Australia (on behalf Papua New Guinea/ PNG)	New Guinea Arafura Sea	Continental Shelf
4.	1971	Indonesia, Thailand	Strait of Malacca Andaman Sea	Continental Shelf
5.	1971	Indonesia, Malaysia, Thailand	Northern Strait of Malacca	Continental Shelf
6.	1972	Indonesia, Australia	Timor Sea Arafura Sea	Continental Shelf
7.	1973	Indonesia, Australia (on behalf PNG)	South of New Guinea in the Arafura Sea	Territorial Sea Continental Shelf Fishery boundary
8.	1973	Indonesia, Singapore	Straits of Malacca	Territorial Sea
9.	1974	Indonesia, India	Andaman Sea between Nicobar Islands and Sumatra	Continental Shelf
10.	1975	Indonesia, Thailand	Andaman Sea	Continental Shelf
11.	1977	Indonesia, India	Andaman Sea	Continental Shelf
12.	1978	Thailand, India	Andaman Sea	Continental Shelf
13.	1978	Indonesia, Thailand, India	Andaman Sea	Continental Shelf
14.	1979	Malaysia, Thailand	Straits of Malacca Gulf of Thailand	Territorial Sea
15.	1979	Malaysia, Thailand	Gulf of Thailand	Continental Shelf
16.	1980	Myanmar, Thailand	Andaman Sea	Territorial Sea Continental Shelf Fishery Boundary

[62] S. P. Jagota, Maritime Boundary, *Publications on Ocean Development*, v. 9 (Dordrecht: M. Nijhoff, 1985), 27.

No.	Year	Countries	Area	Type of Delimitation
17.	1980	Indonesia, PNG	Pacific Ocean	Continental Shelf EEZ
18.	1981	Indonesia, Australia	Timor Sea	Provisional Fishery Zone
19.	1986	Myanmar, India	Andaman Sea Coco Channel Bay of Bengal	Territorial Sea Continental Shelf Fishery line
20.	1993	Thailand, India	Andaman Sea	Continental Shelf
21.	1993	Myanmar, Thailand, India	Andaman Sea	Continental Shelf
22.	1995	Malaysia, Singapore	Johor Straits	Territorial Waters
23.	1997	Indonesia, Australia	Timor Sea	Continental Shelf EEZ
24.	1997	Thailand, Vietnam	Gulf of Thailand	Continental Shelf EEZ
25.	2000	Vietnam, China	Gulf of Tonkin	Territorial Sea Continental Shelf EEZ
26.	2003	Indonesia, Vietnam	South China Sea	Continental Shelf
27.	2009	Indonesia, Singapore	Western Singapore Strait	Territorial Sea
28.	2009	Brunei, Malaysia	North of Borneo	Territorial Sea Continental Shelf EEZ
29.	2014	Indonesia, the Philippines	Sulawesi Sea Mindanao Sea	EEZ
30.	2014	Indonesia, Singapore	Singapore Strait	Territorial Sea

Adapted from: Tara Devenport, "Southeast Asian Approaches to Maritime Delimitation," *Asian Society of International Law: Singapore*, 2012, http://cil.nus.edu.sg/wp/wp-content/uploads/2010/08/TaraDavenport-ASIL-Southeast-Asian-Approaches-to-Maritime-Delimitation.pdf.

From Table 2, the delimitation arrangements vary by regime delimitation types. Five of them uniquely address territorial limits and 14 treaties cover the delimitation of the continental shelves. Eight other agreements have been concluded in multiple regimes, such as the territorial sea, the continental shelf, the fishery line, and the EEZ in a single agreement. The 1981 Provisional Fishery Line agreement between Indonesia and Australia marked the only agreement that solely rules the fishery zone in the region. From all the agreements, the agreement between Indonesia and Australia in Timor Sea

are one of the only two cases that distinguish the EEZ and Continental Shelf in the same region.[63] In addition, not all delimitations were established bilaterally. The 1978 Indonesia-India-Thailand Continental Shelf delimitation and the 1993 India-Myanmar-Thailand Continental Shelf delimitation are examples of trilateral maritime delimitation agreements among Southeast Asian countries, which also include a neighboring country. Those two agreements established tri-junction boundaries that are closely related to bilateral agreements between the parties. The 1978 agreement followed the settled boundary between India and Indonesia in 1977 and Indonesian-Thailand boundary agreement in 1975. The agreement between Thailand and India in the area was signed on the same day as the trilateral agreement.[64] The 1993 India-Myanmar-Thailand Continental Shelf delimitation in the Andaman Sea is also connected with previous bilateral arrangements between parties.

1. Resource Factor

The 30 treaties have established fixed maritime boundaries in several different areas in Southeast Asian waters. Among them, the Andaman Sea is an area where most of the maritime disputes ended in delimitations. By examining the natural resource deposits, most of the delimited waters are resource-scarce areas. The Andaman Sea is a clear example where the absence of natural resources like oil and gas has led to easier agreements. A report by the U.S. Geological Survey depicts the absence of oil and gas exploration in the Andaman Sea.[65] The other map, however, shows that the area might have unknown potential sediment and a fair oil reserve of 1 to 10 billion barrels.[66] These possibilities had been anticipated by countries when they signed the agreements by the

---

[63] The other case is an agreement between Australia and PNG in Torres Strait, Southern Papua, in 1978. Tara Davenport, "Southeast Asian Approaches to Maritime Delimitation," *Asian Society of International Law: Singapore*, 2012, 20, http://cil.nus.edu.sg/wp/wp-content/uploads/2010/08/TaraDavenport-ASIL-Southeast-Asian-Approaches-to-Maritime-Delimitation.pdf.

[64] Jonathan I. Charney and Lewis M. Alexander, eds., *International Maritime Boundaries*, vol. 2 (Dordrecht: Martinus Nijhoff Publishers, 1993), 1380.

[65] Douglas W. Steinshouer et al., "Maps Showing Geology, Oil and Gas Fields, and Geological Provinces of the Asia Pacific Region," Open-File Report (US Department of Interior and US Geological Survey, last modified March 25, 2013), 15, http://pubs.usgs.gov/of/1997/ofr-97-470/OF97-470F.

[66] Joseph R. Morgan and Mark J. Valencia, eds., *Atlas for Marine Policy in Southeast Asian Seas* (Berkeley: University of California Press, 1983), 103.

inclusion of a clause covering possible joint-exploitation and benefit sharing. The trilateral agreement between Indonesia, India, and Thailand of their tri-junction-point in the Andaman Sea addresses it in Article III, which states:

> If any single geological petroleum or natural gas structure or field, or other mineral deposit of whatever character, extends across the boundary lines . . . , the three Governments shall communicate to one another all information in this regard and shall seek to reach agreement as to the manner in which the structure, field or deposit will be most effectively exploited and the benefits arising from such exploitation will be equitably shared.[67]

A similar clause also appears in an agreement between Indonesia, Malaysia, and Thailand when the three countries compromised the three-junction-point in the Northern part of the Strait of Malacca.[68] Despite the absence of natural resources deposits, several agreements have been concluded in resource-rich areas, such as in the Natuna Sea.

2. Baseline Factor and Method of Delimitation

Most delimitation agreements do not deal with complicated baseline considerations, which means that maritime boundaries are drawn from undisputed coasts or islands. The clear status of the coasts or islands countries has been mainly inherited from colonial powers. From the clear land status, not all agreements take the same method to determine the maritime boundaries. The common methodology to determine the boundary is by using an equidistant method, which is taking the same distance from the two adjacent coasts or baselines. Despite that method, Southeast Asian states have also demonstrated flexibility in determining maritime boundaries by compromising their maximum claims. An example of this condition is the 1973 Indonesia-Singapore Territorial Sea Delimitation in the Straits of Malacca. Both countries have agreed upon a boundary that uses a modified equidistant line, as the boundary shifts slightly to the south, thus favoring Singapore. This arrangement was to follow the deep-draft ship's route that stretches close to the boundary.[69] Myanmar and India have also agreed to

---

67 Charney and Alexander, *International Maritime Boundaries,* 1387–8.

68 Ibid., 2:1453.

69 Charney and Alexander, *International Maritime Boundaries,* 1051.

delimitating their maritime boundaries using a flexible method instead of a strict equidistant rule. The boundary agreed upon was drawn in favor of Myanmar by ignoring India's Narcondam Island and Barren Island as base points, thus resulting in the line that lay in the southern part of the equidistant line.

The case of Myanmar and India is an example of an agreed-upon maritime boundary in an area that still has a disputed island. This is one of the exceptions to the first hypothesis, which argues that disputes on resource-poor areas and clear base points will end in delimitation arrangements. The other exception to this hypothesis is the delimitation agreement between Indonesia and Malaysia on Natuna Sea that is known as a resource-rich area. Both exceptions are addressed in the next section after discussing the delimitation agreement in the Singapore Strait between Indonesia and Singapore. The latter is an example of a maritime boundary agreement that falls in a resource-poor area and has undisputed base points.

B. INDONESIA–SINGAPORE AGREEMENTS IN THE SINGAPORE STRAIT

In September 2014, Indonesia and Singapore signed their third agreement for maritime boundaries by signing a treaty to finalize another territorial sea border in the eastern part of Singapore Strait. This agreement followed the previous agreements, the 1973 and 2009 Treaties, which completed both countries' boundaries, but a segment in the Eastern Singapore Strait, which requires Malaysia to settle its boundary with Singapore first.[70] From Indonesia's perspective, the 2014 agreement marks Singapore as the only one of 10 countries that resolves all shared boundaries with Indonesia.[71]

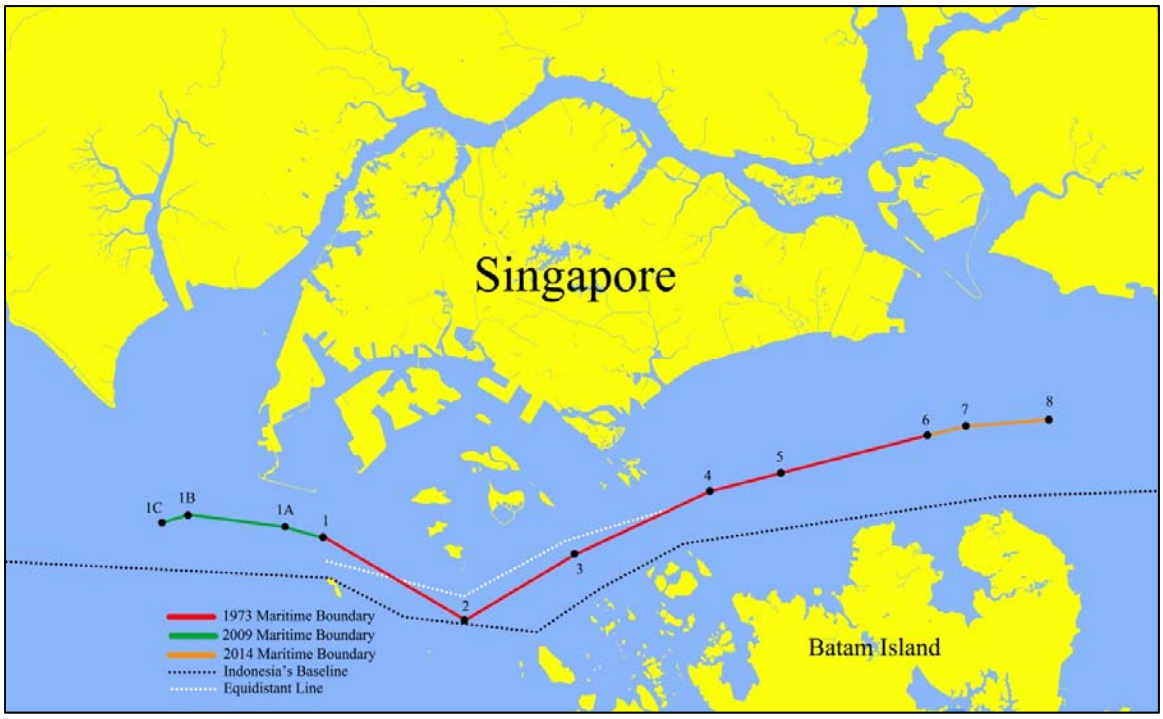
The first agreement between the two ASEAN countries took place in 1973, when Indonesia and Singapore agreed upon 24 miles of their territorial sea limits in the Singapore Strait. Six points were established in the center part of the Singapore Strait as

70 "Indonesia, Singapore Sign Agreement on Territorial Boundaries," Tempo.co, September 4, 2014, http://en.tempo.co/read/news/2014/09/04/074604559/Indonesia-Singapore-Sign-Agreement-on-Territorial-Boundaries.

71 Marsetio, "Indonesian Sea Power" (Special Guest Lecture, Naval Postgraduate School, February 9, 2015).

the connector of the territorial sea boundary. The line drawn did not adopt the equidistant principle, as Points 2 and 3 are closer to Indonesia's side; the boundary follows the main route of deep-draft tankers (Figure 1).[72] The delimitation in the strait had been a priority for both countries since it is a part of one of the world's busiest straits. The flexibility of the delimitation method shows that both countries, particularly Indonesia which had "sacrificed" some portions of its territorial sea, were more concerned about safety of navigation than the extension of the territory.[73]

Figure 1. Indonesia-Singapore Maritime Delimitation in the Singapore Strait.



Adapted from: I Made Andi Arsana, "Mapping a Good Fence with Singapore," *GeoPolitical Boundaries*, February 10, 2009, https://geoboundaries.wordpress.com/2009/02/10/mapping-a-good-fence-with-singapore/.

[72] Charney and Alexander, *International Maritime Boundaries,* 1050.

[73] Ibid., 1052.

The agreement in 1973 left gaps in the Eastern and Western parts of the strait. Not until 36 years later did the two countries conclude their second agreement. On March 2009, after 4 years of negotiations, Singapore and Indonesia agreed to delimit the western part of the Singapore Strait. The two Foreign Ministers, Indonesia's Hassan Wirajuda and Singapore's George Yeo signed an agreement that extends the 1973 delimitation 12.1 km farther westward. This delimitation leaves an uncertain portion of the western end, since it needs the involvement of Malaysia to determine a tri-junction point. The 2009 agreement significantly resolved some issues that emerged between Indonesia and Singapore, particularly about Singapore land reclamation. The deal shows that Singapore abandoned its claim to use the reclaimed land as base points.[74] Moreover, the use of Nipah Island by Indonesia as a base point preserved the status of the island as a legal base point, even though it was almost sunk in the high tide due to Singapore's land reclamation program.[75] Additionally, the 2009 treaty contributes to the anti-piracy efforts of both countries in the Singapore Strait. Both countries, together with Malaysia, have been involved since 2004in a counter-piracy coordinated patrol named MALSINDO or Malacca Strait Sea Patrol (MSSP).[76] The established boundary will provide certainty for both navies in conducting patrols in their own territorial seas.

The last territorial sea delimitation agreed upon by Indonesia and Singapore took place in 2014, when the two coastal states agreed to delimit their boundaries in the eastern part of the Singapore Strait. The effort of delimitating the eastern portion of the strait had been initiated by the two heads of government when Indonesian President Susilo Bambang Yudhoyono and Singaporean Prime Minister Lee Hsien Long met in the

---

74 Lilian Budianto, "RI, Singapore Sign Maritime Boundary Agreement," The Jakarta Post, March 11, 2009, http://www.thejakartapost.com/news/2009/03/11/ri-singapore-sign-maritime-boundary-agreement.html.

75 Ibid.

76 Joshua H. Ho, "The Security of Sea Lanes in Southeast Asia," *Asian Survey* 46, no. 4 (2006): 571, doi:10.1525/as.2006.46.4.558.

14th ASEAN Summit in Thailand in 2009.[77] Two years later, both representatives commenced technical discussions of the treaty in Singapore. Indonesia and Singapore finalized the deal in the final round of negotiations, in August 2014, in Medan, after conducting nine series of negotiations since 2011.[78] The 5.1 nautical miles territorial maritime border lies between Changi and Batam marks an important achievement for both countries' relations, as "[o]fficials and observers from both sides see it as a demonstration of how Indonesia and Singapore have been able to work together in areas of mutual interest."[79] However, the 2014 agreement leaves gaps in areas between Pedra Branca and Bintan Island since Singapore and Malaysia have not yet demarcated their maritime limits.

1. Resource Factor

As mentioned, the value of certain areas can be tangible or intangible. The Singapore Strait has a tangible value, as it, along with the Strait of Malacca, is one of the world's most important straits, economically and strategically, and links the Indian and Pacific Oceans. More than 65,000 vessels transit the straits annually, connecting the major world's economies such as Europe, the Middle East, Japan, and China.[80] Though having a key economic value, the Singapore Strait lacks natural resources. No oil and gas fields lie in the areas, nor do potential ones. The dense shipping traffic in the areas and intensive industrialization contribute to marine pollution, thus causing the decline of

77 "Perjanjian Garis Batas Laut Indonesia-Singapura," Tabloid Diplomasi, August 21, 2009, http://www.tabloiddiplomasi.org/previous-isuue/40-maret-2009/180-perjanjian-garis-batas-laut-indonesia-singapura.html.

78 Zakir Hussain, "Singapore, Indonesia Sign Treaty on Maritime Borders in Eastern Singapore Strait," The Straits Times, (September 3, 2014), http://www.straitstimes.com/asia/se-asia/singapore-indonesia-sign-treaty-on-maritime-borders-in-eastern-singapore-strait.

79 Ibid.

80 H.M. Ibrahim and Nazery Khalid, "Growing Shipping Traffic in the Strait of Malacca: Some Reflections on the Environmental Impact" (the Global Maritime and Intermodal Logistics Conference, Singapore, December 17, 2007), 3, http://www.mima.gov.my/mima/wp-content/uploads/GMIL%20Spore%20_Dec07_.pdf.

fishing activities in the Strait.[81] The traffic in the Singapore Strait also inhibits fishermen from conducting their activities. Instead of the narrow Singapore Strait, fishing activities take place in the Strait of Malacca and Johor Straits. These facts explain how the economic value of the Singapore Strait drives from shipping activities.

2. Baselines

The three maritime delimitation agreements between Indonesia and Singapore are drawn from clear baselines inherited from the British and Dutch colonial powers. These two dominant powers in Southeast Asia established their colonies in both the mainland and the archipelago. Initially, the British and the Dutch had overlapping claims in some regions of the archipelago. The competition between the two European countries dated to the 1800s when Thomas Stamford Raffles transformed Singapore into a major port in the region. The development of Singapore threatened Netherland's Batavia, which was aggravated by Raffles' provocation to establish a trade network with Aceh and other cities in Sumatera. This issue caught the attention of the two countries' leaders, Willem II and King George, who then compromised. Great Britain and the Netherlands revised the 1814 London Treaty, or Anglo-Dutch Treaty, in 1824. The treaty ruled territorial, commercial, and financial arrangements that led to the establishment of the British Malaya and the Dutch East Indies.[82] In the territorial aspect, the Anglo-Dutch Treaty arranged the territory of the two countries, in which any island south of the Strait of Malacca and Singapore belonged to the Dutch, whereas the northern part of the strait became British-owned. The Netherlands acknowledged British occupation of Singapore and relinquished Malacca to the British. The British, on the other side, gave all of its colonies in Sumatera to the Dutch.[83]

---

[81] Michael Hogan, "Singapore Strait," The Encyclopedia of Earth, May 13, 2013, http://www.eoearth.org/view/article/170665/.

[82] "Signing of the Anglo-Dutch Treaty (Treaty of London) of 1824," History SG, accessed August 10, 2015, http://eresources.nlb.gov.sg/history/events/5005d886-9c27-421e-a22d-44fb5965350c.

[83] Ibid.

Indonesia and Singapore refer to the Anglo-Dutch treaty in defining their territory. All offshore small islands have never been objects of dispute between the two countries. The Anglo-Dutch treaty does not depict the details of the territory on the map; it only mentions that the Dutch owns everything south of the Strait of Singapore. Article XII of the treaty states, "His Britannick Majesty, however, engages, that no British Establishment shall be made on the Carimon Isles, or on the Island of Bantam, Bintang, Lingin, or on any of the other Islands South of the Straits of Singapore, nor any Treaty concluded by British Authority with the Chiefs of those Islands."[84] This statement is enough to make all offshore islands located in the Singapore Strait inheritances of the colonial powers, which became the basis of defining the territory.

Indonesia and Singapore use their own baselines to agree upon their maritime boundaries. As an archipelagic country, Indonesia uses Karimun Kecil Island, Nipah Island, Pelampong Island, Helen Mars Rock, Benteng Rock, Berhanti Stone, and Nongsa Island as base points.[85] These base points make baselines as the foundation for determining the maritime territorial boundaries with Singapore. Singapore uses its normal baselines, which lies along the mainland, to determine the maritime borders.

3. Political Considerations

The three agreements between Indonesia and Singapore also reflect political considerations. The first maritime agreement was negotiated during the period of Indonesia's campaign to claim its concept of *Wawasan Nusantara*, or the Indonesian Archipelagic Vision. *Wawasan Nusantara* is the fundamental principle of Indonesian geopolitics to overcome the challenges Indonesia faces in managing its 17,504 islands

84 "Anglo-Dutch Treaty, London on March 17, 1824," accessed August 19, 2015, http://historyofbengkulu.blogspot.com/2008/07/anglo-dutch-treaty-of-1824.html.

85 Peraturan Pemerintah No. 38 Tahun 2002: Daftar Koordinat Geografis Titik-Titik Garis Pangkal Kepulauan Indonesia, 2002, http://www.kemendagri.go.id/media/documents/2002/06/28/PP_no._38_Thn_02.doc.

and varied cultural backgrounds. To unite the thousands of islands, the Indonesian government declared the concept of the archipelagic state through the *Djuanda Declaration* in December 13, 1957. The declaration stated that all waters surrounding and between the islands were included in Indonesian territory. This new concept challenged the notion of the "freedom of the sea."[86] Since then, Indonesia has tried to introduce the concept of the archipelagic state to the international community.

This effort included promoting the *Djuanda Declaration* in the Convention of the Law on the Sea as well as actively negotiating maritime boundaries with neighboring countries. The first endeavor has managed to bring the Convention to accept the concept of an archipelagic state, as stated in the provision of Article 47 of the UNCLOS 1982. This success led to the agreement of several maritime borders. As shown in Table 2, from 1969 to 1982, Indonesia delimited more maritime boundaries than any other country in Southeast Asia. It concluded 14 out of 18 maritime agreements prior to 1982. In doing so, Indonesia often sacrificed the ideal conditions of the delimitations during the negotiations. The 1973 agreement with Singapore demonstrates that Indonesia allowed the agreed-upon line to encroach on Indonesia's archipelagic baselines. The tendency to give up some portion of "its" waters to gain support for the archipelagic concept is also indicated in Indonesia's other agreements. The 1969 agreement with Malaysia, the 1971 trilateral agreement with Thailand and Malaysia, the 1972 agreement with Australia, and the 1978 trilateral agreement with India and Thailand confirm similar behavior, when Indonesia accepted the principle of non-equidistance in determining maritime boundaries in favor of other parties.

[86] Vivian Louis Forbes, *Indonesia's Delimited Maritime Boundaries* (Heidelberg: Springer, 2014), 13.

The second and third agreements were concluded during the terms of President Yudhoyono. These two agreements demonstrated a new trend in maritime dispute settlements. Unlike the other agreements, the 2009 and 2014 agreements had been concluded in a relatively short time. The negotiation for the 2009 agreement took place in 2005, whereas the first talks for the latter was conducted five years prior to the agreement. Both countries could arrange new agreements due to the political will of their leaders, especially on Indonesia's side. President Yudhoyono was famous for his foreign policy of "thousand friends zero enemy." During his presidency, Indonesia sought active roles in foreign affairs, including the dispute settlement. The fact that the first talks for the 2009 treaty commenced in Yudhoyono's early terms and the second were agreed upon just before the end of his presidency reveals that political will matters for the two treaties Indonesia and Singapore signed.

C. THE EXCEPTIONS

Most maritime disputes that ended in delimitation arrangements concerned resource-poor waters with clear island status. However, two cases out of 30 maritime agreements in Southeast Asia were agreed-upon resource-rich waters or disputed islands. The two cases were between Burma and India in 1986 when they signed an agreement delimitating their maritime boundaries in the Andaman Sea and the 1969 Agreement between Malaysia and Indonesia in the Natuna Sea. Burma's claim of Narcondam Island, east of India's Andaman Islands, complicated the first agreement. The second was about continental shelf delimitation on oil-and-gas-rich areas.

1. Burma-India Agreement in the Andaman Sea

The agreement between Burma (now Myanmar) and India in the Andaman Sea was initially seen as a complicated problem. One of those complicated reasons concerned the disputed Narcondam Island. Narcondam Island is a craterless volcano which is

considered part of the Andaman Islands. Narcondam lies 140 km east of the North Andaman and has an area of 6.8 square kilometers. Burma claimed this island along with Barren Island, south of Narcondam, and even attempted to occupy Narcondam Island in 1984, which failed.[87] The other factor that made the agreement hard to achieve was Burma's insistence in using straight baselines that cut off the Gulf of Martaban which connects Irrawadi Delta to Moscos Island, claimed by Burma in 1968 (Figure 2).[88] India objected to these uncommon Burma baselines being used to generate an equidistant line.

The disputes over Narcondam Island and Burma's claimed baselines made the negotiation process over the maritime boundary difficult to reach. Eleven years after commencing talks in 1976, India and Burma eventually signed the agreement. Both parties resolved the disputes peacefully after making certain compromises in the agreement (Figure 2). First, Burma relinquished its claim over Narcondam Island in exchange for the exclusion of the island as a base point to determine the maritime boundary. Second, the agreed-upon boundary did not use Burma's straight baselines that crossed the Gulf of Martaban. Having sovereignty over Narcondam Island, India had to agree that the non-equidistant method be used, in Burma's favor. This method gave Burma approximately 625 square nautical miles more than it should have obtained from the equidistant method.[89]

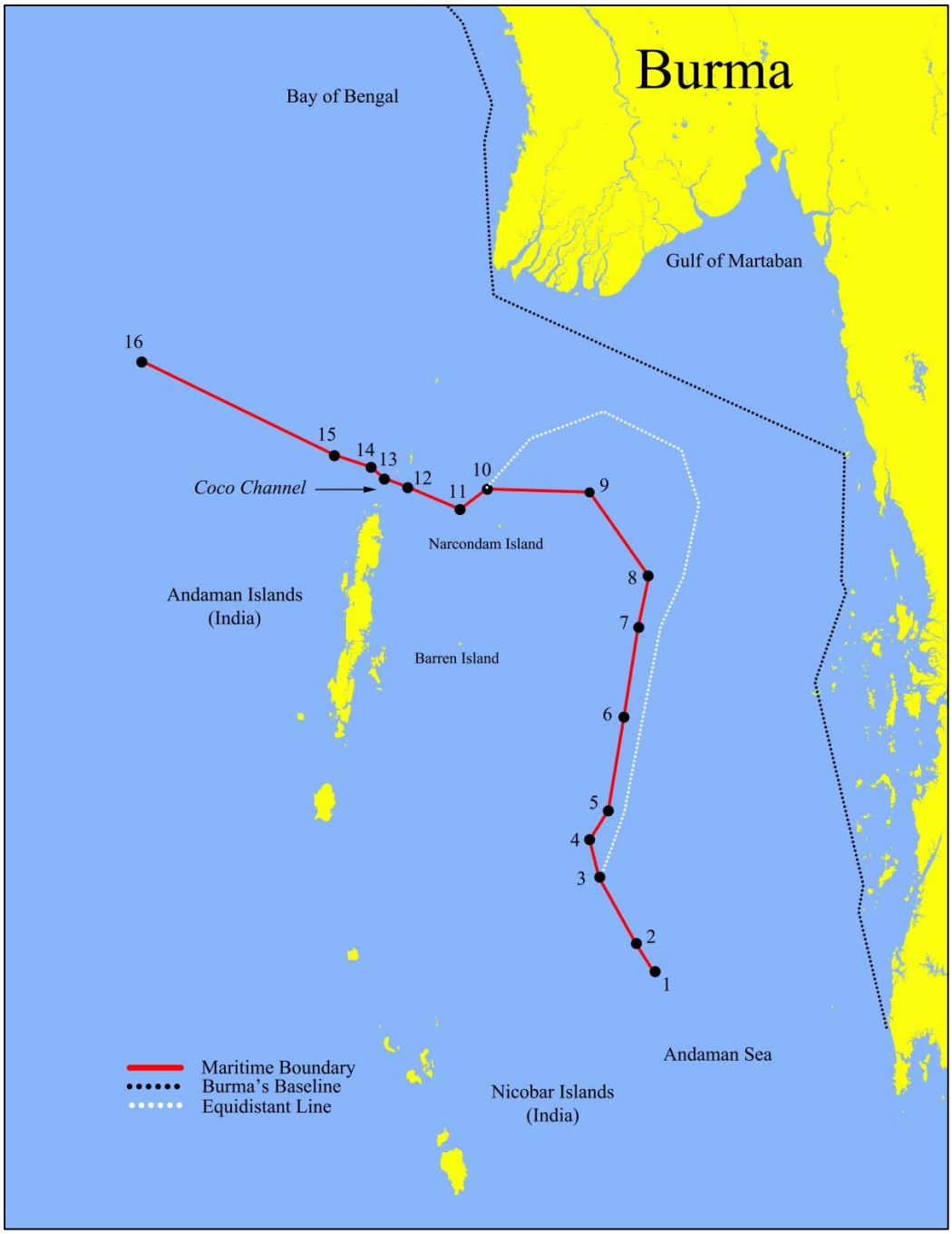
---

87 Prakash Nanda, *Rediscovering Asia: Evolution of India's Look-East Policy* (New Delhi: Lancer Publishers & Distributors, 2003), 597.

88 Victor Prescott, *Maritime Jurisdiction in Southeast Asia: A Commentary and Map* (Honolulu: East-West Environment and Policy Institute, 1981), 22.

89 Charney and Alexander, *International Maritime Boundaries*, 1993, 2:1334–5.

Figure 2. Burma and India 1986 Maritime Boundary Agreement



Adapted from: Jonathan I. Charney et al., eds., *International Maritime Boundaries*, vol. 2 (Dordrecht: M. Nijhoff, 1993) and Prescott, *Maritime Jurisdiction in Southeast Asia: A Commentary and Map* (Honolulu: East-West Environment and Policy Institute, 1981)

2. Indonesia-Malaysia Agreement in the Natuna Sea

The Indonesia-Malaysia Agreement contains three separate lines, dividing the continental shelf of Indonesia and Malaysia in the Strait of Malacca and the Natuna Sea (Figure 3). The two continental shelf borders are located around the Natuna Islands, areas well known for their oil and gas deposits. An Italian oil company, Agip, first discovered the Natuna gas field in 1970.[90] It is the biggest field in Southeast Asia with the estimate of gas deposits reaching 46 trillion cubic feet.[91] It was not until 1980, however, that the Indonesian state-owned company Pertamina conducted the first exploitation. The oil and gas field spreads over both eastern and western Natuna Islands, which now became an important source of natural resources for both Indonesia and Malaysia. The present oil and gas field maps show exploitation projects conducted by the two countries' companies around the agreed-upon borders. The agreement demonstrates that a peaceful settlement through bilateral negotiations could also be accomplished in resource-rich areas like in Natuna Sea.

The reasons such an agreement happened was a matter of timing. Indonesia and Malaysia agreed to the continental shelf limit just before the discovery of potential oil and gas reserves in the areas. At the time of the negotiation, both countries did not factor economics as the main consideration for determining the boundaries. In addition, the negotiation process took place during a period when Indonesia needed to protect its archipelagic concept by establishing as many maritime boundaries as possible with neighboring countries. This motivation is obvious when observing the third continental shelf limit drawn from the end of the Indonesia-Malaysia land boundary in Borneo Island northward to the Natuna Sea. That continental shelf line encroached westward from the equidistant line in favor of Malaysia (Figure 3). In this case, the Suharto administration gave up some portion of its waters to achieve the broader goal: the Natuna Sea.

---

90 "Natuna Gas Field, Indonesia," Offshore Technology, accessed August 20, 2015, http://www.offshore-technology.com/projects/natuna/.

91 Ibid.

Figure 3. Indonesia and Malaysia Maritime Boundaries

Adapted from: Jonathan I. Charney et al., eds., *International Maritime Boundaries*, vol. 1 (Dordrecht: M. Nijhoff, 1993).

D. SUMMARY

Most maritime delimitation agreements in Southeast Asia solve maritime disputes that are located in resource-poor waters and are drawn from clear islands or coastlines. Currently, 30 delimitation agreements in Southeast Asian waters have been concluded among ASEAN members as well as with neighboring countries; 28 of them are agreements of maritime boundaries in resource-poor waters and with clear baselines. Many of those agreements use a modified equidistant line to determine the boundary. It means that maritime boundaries are negotiable and flexible. The best example of agreements over resource-limited areas and clear baselines is the Indonesia and Singapore agreement concerning the Singapore Strait.

Indonesia and Singapore have three agreements regarding the Singapore Strait. The first agreement, signed in 1973, divided the two states' territorial sea in the center of the Singapore Strait. The last two agreements, made in 2009 and in 2014, extended the existing border westward and eastward. The negotiations ran smoothly because the issue lacked an economic interest, particularly the existence of natural resources in the areas. The economic significance of the strait is simply its strategic location; it is used for main shipping routes connecting East Asia and the Middle East. The two countries do not dispute any island in the Singapore Strait that they inherited from colonial powers. The absence of natural resources and the clear land status to determine the boundary makes peaceful talks likely to happen. In addition, the prompt progress of negotiation was supported by conducive political events and political will.

The only two exceptions to the general pattern of delimitation arrangements are the agreement between Indonesia and Malaysia in oil/gas-rich areas and the agreement between Burma and India in the waters around a disputed Narcondam Island in the Andaman Sea. The first case did not end in disputes because the gas field was not discovered until 1970, a year after the agreement. Moreover, Indonesia's tendency to concede some portions of waters off northern Borneo's West Coast gained support for archipelagic ideas, expediting the negotiations. The next case that demonstrates the possibility of peaceful talks resulted in the delimitation of a maritime boundary around a disputed island. Burma and India resolved the dispute by making some concessions, where the former acknowledged the sovereignty of Narcondam Island to India, and the latter gave up some portions of waters to Myanmar in return for the island.

III. JOINT-DEVELOPMENT AS A PROVISIONAL MEASURE FOR MARITIME DISPUTES

This chapter will discuss another peaceful outcome for maritime boundary disputes in Southeast Asia. Different from delimitation arrangements, joint-development exploits the sea for the benefit of disputing parties in a provisional agreement. Many countries in the world have practiced joint-development as an alternative to resolving disputes over their maritime boundaries. Saudi Arabia and Bahrain established the very first joint-development in 1958, when Bahrain's rulers agreed to drop their claim over the Fasht Abu-Safa oilfield in return for shared revenue from Saudi Arabia's exploration.[92] Since then, subsequent joint-development agreements have sprung up worldwide in various models.

Joint-development is widely seen as a provisional measure mandated by the UNCLOS. The UNCLOS does not state explicitly the obligation to manage disputes through joint development as an option if the delimitation arrangement is difficult to achieve; however, it does mandate that the disputing countries pursue a temporary solution in a situation in which no parties reach agreement in disputes about overlapping EEZ and continental shelf claims. Articles 74(3) and 83(3) of the UNCLOS state that "the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transition period, not to jeopardize or hamper the reaching of the final agreement."[93] Provisional arrangements stated by these articles may take different forms, such as a moratorium on all activities in the disputed areas and joint development of fisheries and hydrocarbon resources in those areas.[94] The way the UNCLOS uses the word

---

92 Ahmad Razavi, *Continental Shelf Delimitation and Related Maritime Issues in the Persian Gulf*, Publications on Ocean Development 29 (The Hague: Martinus Nijhoff Publishers, 1997), 125.

93 *United Nations Convention on the Law of the Sea*, accessed July 23, 2015, http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

94 Robert Beckman and Leonardo Bernard, "Framework for the Joint Development of Hydrocarbon Resources" (Centre for International Law, National University of Singapore, 2010), 9–10, http://cil.nus.edu.sg/wp/wp-content/uploads/2010/08/BECKMAN-AND-BERNARD-FRAMEWORK-FOR-THE-JOINT-DEVELOPMENT-OF-HYDROCARBON-RESOURCES.pdf.

"provisional" means that such an arrangement is temporary in nature. The disputants cannot gain sovereignty over features in the surrounding waters as a result of such provisional agreements.[95]

The UNCLOS articles encourage Southeast Asian nations to adopt joint-development options for some unresolved maritime disputes in Southeast Asia. Seven joint-development agreements have been established in Southeast Asian waters to date: four in the Gulf of Thailand, two in the Timor Gap, and one in the southern South China Sea. All of the locations are resource-rich areas without sovereignty problems over islands or other maritime features. It suggests that in Southeast Asia, joint development is the most common outcome when sovereignty disputes are few and natural resources are abundant. This chapter also finds that the political will of the respective governments and the involvement in a regional organization like ASEAN could encourage the disputant countries to select a joint-development option. This chapter will first review joint-development cases practiced in Southeast Asia waters. Then, as a case study, it will discuss the situation in the Gulf of Thailand, particularly the experience of Malaysia, Thailand, and Vietnam in agreeing to joint development agreements for their disputed waters.

A. JOINT DEVELOPMENT PRACTICES IN SOUTHEAST ASIA

In Southeast Asia, various models of joint-development in the disputed waters have been practiced for decades. David M. Ong classifies joint-development into three different models: 1) One country exploits other country's oilfield and shares the revenue, 2) The disputing states adopt compulsory unification and joint ventures to exploit shared resources, and 3) The related parties establish an institutional framework to promote cooperation in exploiting shared deposits.[96] Table 3 summarizes all joint-development practices established by Southeast Asian countries. It shows that the agreed-upon joint developments did not share the same scheme; instead, they adopted all three of Ong's

[95] Ibid., 10.

[96] David M. Ong, "Implications of Recent Southeast Asian State Practice for the International Law on Offshore Joint Development," 2011, http://cil.nus.edu.sg/wp/wp-content/uploads/2011/06/Session-5-David-Ong-JD-SEAsianStatePractice-Jun111-pdf.pdf.

classification. Most of the parties enjoyed economic benefits from such arrangements, as the multinational companies could freely extract natural resources in the agreed-upon area without fear of intimidation. In contrast, some of the agreements have not progressed well. The Cambodia-Thailand agreement and the tripartite agreement between Thailand, Malaysia, and Vietnam are examples of how the agreement for joint development is not the only precondition to develop the areas. It also requires total commitment and cooperation from all the involved parties and conducive inter-state relations.

Table 3. Joint Developments in Southeast Asia

Year	Countries	Areas	Scheme/Remarks	Model
1979/ 1990	Malaysia, Thailand	Gulf of Thailand	Joint-development is conducted under sophisticated institutions called the Joint Authority. The Joint Authority awarded rights of exploration to contractors with certain profit sharing arrangements.	3
1989	Indonesia, Australia	Timor Gap	Exploitation is conducted by contractors with exploitation rights from the Joint Authority, as approved by the Ministerial Council.	3
1992	Vietnam, Malaysia	Gulf of Thailand	Joint-venture between Petronas and Petro Vietnam to conduct exploration in the Defined Area.	2
1999	Malaysia, Thailand, Vietnam	Gulf of Thailand	Established as mandated by the two previous bilateral arrangements. Not implemented.	-
2001	Cambodia, Thailand	Gulf of Thailand	Not implemented.	-
2002	Australia, East Timor	Timor Gap	Exploitation is conducted by contractors with exploitation rights from the Joint Commission, as approved by the Ministerial Council. Revenue sharing: 90% for East Timor and 10% for Australia.	3
2009	Brunei, Malaysia	Southern South China Sea	Commercial Arrangement Area-revenue sharing. Malaysia's Petronas conducted joint-exploration with the Brunei National Petroleum Company in Brunei's maritime areas.	1

Adapted from: David M. Ong, "Implications of Recent Southeast Asian State Practice for the International Law on Offshore Joint Development," n.d., http://cil.nus.edu.sg/wp/wp-content/uploads/2011/06/Session-5-David-Ong-JD-SEAsianStatePractice-Jun111-pdf.pdf.

The pioneers of joint-development in the region are Thailand and Malaysia. Both countries signed a memorandum of understanding on the delimitation of the continental shelf boundary in 1979. This memorandum defined an overlapping area that requires the establishment of a joint-authority to exploit natural resources, even though the body was only established in 1990.[97] The overlapping area was defined as the Malaysia-Thailand Joint Development Area (MTJDA) situated in the southeastern part of the Gulf of Thailand. It is a location of abundant buried hydrocarbon reserves with an estimated 9.5 trillion cubic feet of proved and probable natural gas.[98] No sovereignty disputes between Malaysia and Thailand existed in the eastern coast of the Malay Peninsula where both countries share territorial borders. The absence of a sovereignty issue around the MTJDA discouraged both countries from asserting a continental shelf claim, which resulted in the agreement to jointly exploit the area.

In 1989, Indonesia and Australia created a zone of cooperation in an area known as the Timor Gap, which is famous for its abundant natural gas reserves. The area is believed to have 5 billion barrels of oil that make it the world's 23rd largest oil deposit.[99] The Timor Gap also contains an estimated 50 trillion cubic feet of liquid natural gas (LNG).[100] East Timor renewed this agreement by signing a memorandum with Australia immediately after East Timor's independence in 2002.[101] Similar to the MTJDA, the Timor Gap had no sovereignty issues contested by Australia and Indonesia, and later East Timor. The area was left undelimited when Australia and Indonesia agreed on their seabed boundaries in 1972. At that time, Portugal, as the official administrative power in East Timor, did not become involved in the same discussion with Australia and Indonesia regarding the seabed boundaries. After East Timor's integration with Indonesia in 1975, Indonesia and Australia started to discuss the possibility of joint cooperation, which did

97 Charney and Alexander, *International Maritime Boundaries*, 1105–6.

98 "Malaysia: International Energy Data and Analysis," *US Energy Information Administration*, last modified September 24, 2014, https://www.eia.gov/beta/international/analysis.cfm?iso=MYS.

99 "Timor Gap Case Analysis," accessed February 9, 2016, http://www.library.ohiou.edu/indopubs/1995/02/02/0014.html.

100 Ibid.

101 Davenport, "Southeast Asian Approaches," 33.

not conclude until 1989. This case demonstrates that the joint-development concept is favorable for countries in managing disputes in the areas that contain significant natural resources and are free of sovereignty disputes.

Vietnam followed Thailand in making a provisional arrangement with Malaysia for petroleum deposit exploration in 1992 in the Gulf of Thailand. The agreed-upon area is bordered with the one discussed in the 1979 Malaysia-Thailand MoU. The Malaysia-Vietnam coincided area, known as the Defined Area (DA), lies over the Malay Basin, a source of oil and natural gas. The area was reported to have 1.1 trillion cubic feet of natural gas and capable of producing 4,400 barrels of oil per day.[102] No sovereignty issues prevented both countries from embarking on such agreements since Malaysia and Vietnam do not directly border each other; their mainland is separated by 200 nautical miles. The two countries only disputed continental shelf boundaries as a result of unilateral claims that did not result from bilateral negotiations. The 1992 agreement, however, overlapped with the Malaysia-Thailand agreement, thus required trilateral communication to address the issue. Seven years later, Malaysia, Thailand, and Vietnam agreed upon a joint-development principle in the intersected area.[103] Like the previous agreements, no countries contested sovereignty disputes in the area by the time they signed the agreement.

Cambodia started to define its maritime boundary following the reintegration into the international community by negotiating its continental shelf claim with Thailand. The area contested by Cambodia and Thailand lay in the northern part of the Gulf of Thailand, encompassing three sources of oil and natural gas: the Kra Basin, Thai Basin, and Pattani Basin. An estimated 15 trillion cubic feet of natural gas and minor oil reserves lies in those basins.[104] The continental shelf claims of both countries did not involve sovereignty disputes over islands or maritime features, since the 1907 Franco-Siamese Treaty clearly stated that France, Cambodia's former colonial power, had agreed to cede

---

[102] Nguyen Hong Thao, "Joint Development in the Gulf of Thailand," *IBRU Boundary and Security Bulletin*, 1999, 81.

[103] Davenport, "Southeast Asian Approaches," 32.

[104] *Atlas of Mineral Resources of the ESCAP Region: Mineral Resources of Thailand*, vol. 16 (Bangkok: United Nations, Economic and Social Commission for Asia and the Pacific, 1989), 47.

Koh Kut Island and all of the northern islands to Siam.[105] The only problem disputed by the two countries was the basepoint to determine maritime zones. Cambodia and Thailand interpreted one of the clauses in the treaty differently. The treaty says that "the frontier between the French Indo-China and Siam starts at a point that is located at a point opposite the highest point of the Koh Kut Island" (my translation).[106] Thailand argued that the treaty only rules the land boundary and has nothing to do to determine the sea boundary in the strait that separates the mainland and Koh Kut Island.[107] Cambodia, on the other hand, interpreted the clause in the treaty as also defining the maritime boundary between Koh Kut and the mainland. Cambodia draws its continental shelf line from the Thai-Cambodian border in the mainland and crosses Koh Kut Island, "leaving the southern part of the island without a Thai territorial sea or an EEZ area."[108] Figure 1 shows the different interpretations of Thailand and Cambodia regarding the clause.

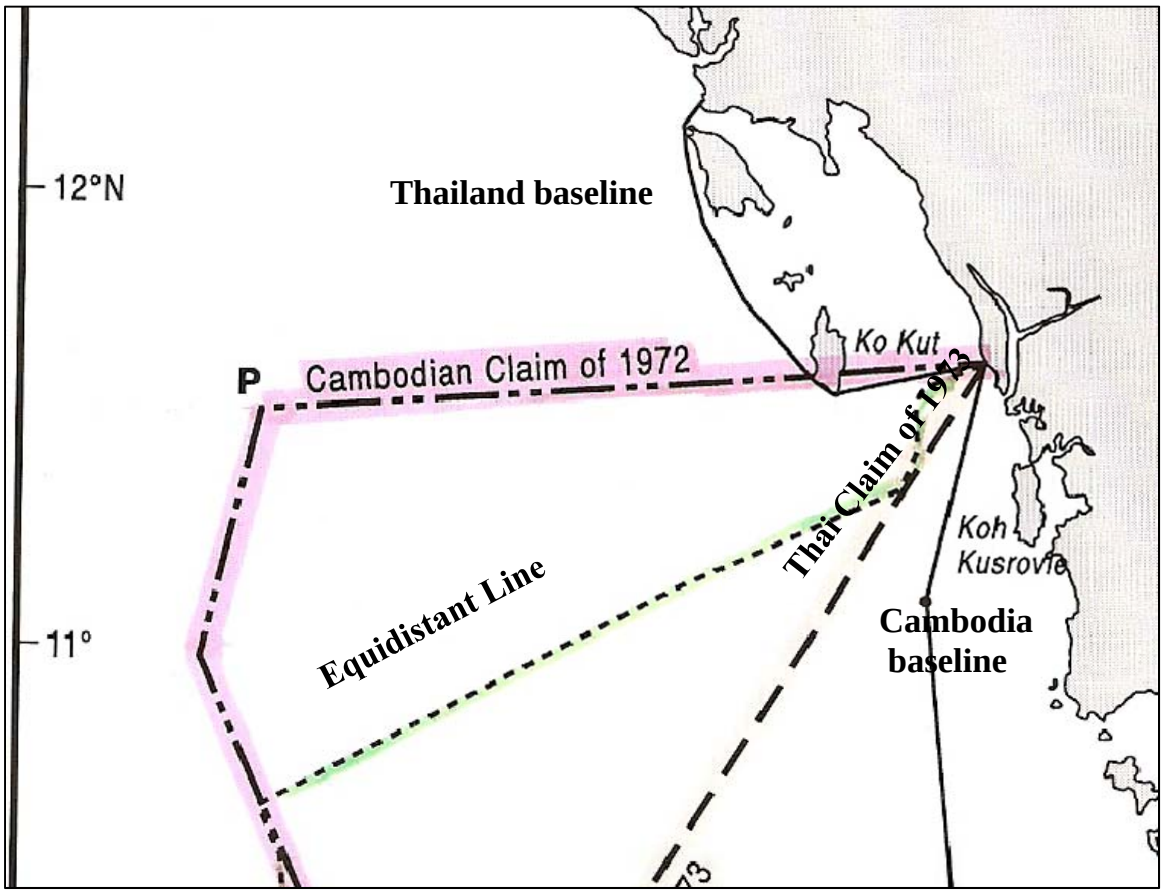
105 Hiran W. Jayewardene, *The Regime of Islands in International Law*, vol. 15, Publications on Ocean Development (Dordrecht: Martinus Nijhoff Publishers, 1990), 435.

106 "Texte Du Traite Franco-Siamois (Franco-Siamese Treaty Text)," *The American Journal of International Law* 1, no. 3 (1907): 265, doi:10.2307/2212466.

107 Somjade Kongrawd, "Thailand and Cambodia Maritime Dispute," *GlobalSecurity.org*, 2009, 2, http://www.globalsecurity.org/military/library/report/2009/thailand-cambodia.pdf.

108 David A. Colson and Robert W. Smith, eds., *International Maritime Boundaries*, vol. 5 (Leiden: Nijhoff, 2005), 3444.

Figure 4. Cambodia and Thailand Different Perspectives Concerning Koh Kut Island.



Source: Victor Prescott and Clive Howard Schofield, *Undelimited Maritime Boundaries of the Asian Rim in the Pacific Ocean*, Maritime Briefing 3, 1 (Durham: IBRU, 2001), 12.

Both governments eventually engaged in commence negotiations to solve their maritime problems. During the negotiations, each country differed in determining the final solution. Thailand favored a delimitation arrangement, while Cambodia insisted on a joint-development solution for the contested waters.[109] Despite sharp differences, in 2001 both countries finally concluded a memorandum of understanding on their overlapping claims. This agreement was seen as a good deal for both countries as it accommodated each preference. The MoU divided the area into northern and southern areas along the 11° latitude line, where Cambodia and Thailand would seek delimitation

[109] Clive Howard Schofield, "Unlocking the Seabed Resources of the Gulf of Thailand," *Contemporary Southeast Asia* 29, no. 2 (August 1, 2007): 286–308, doi:10.2307/25798832.

on the northern part and joint-development for the southern one.[110] No further report is available regarding why they determined the 11° latitude as the distinction line dividing the overlapping claims. The most plausible reason is that the southern part of that line contains more natural resources than the northern part, as proven by Thailand with its exploration works in the southern area. The MoU represents a good sign that Thailand and Cambodia will cooperate in their overlapping claims. Nevertheless, no significant progress had been realized by the two countries as a result of sour relations between them due to various issues.[111]

Several unrelated issues hampered the implementation of the MoU. In 2003, the follow-up discussions of joint development faded out as a result of the increased tension between both countries following the burning of the Thai embassy in Phnom Penh.[112] The riots were caused by national sentiment that flared after a statement by a Thai actress who alleged that Cambodia's Angkor Wat Temple belonged to Thailand. The dispute over the Preah Vihear temple in 2008 and unstable Thai domestic politics in that period further delayed the negotiation. In 2009, Thailand even wanted to cancel the MoU as a protest against the appointment of the Thai former Prime Minister Thaksin Shinawatra as a Cambodian economic advisor.[113] The Thai government later decided to continue respecting the MoU as the relations were restored.[114] The experience of Thailand and Cambodia shows the importance of political dynamics in influencing maritime issue development.

---

110 Ibid., 302.

111 Clive Schofield, "Defining Areas for Joint Development in Disputed Waters," in *Recent Development in the South China Sea and the Prospects for Joint Development*, ed. S. Wu and N. Hong, 2014, 94, http://ro.uow.edu.au/cgi/viewcontent.cgi?article=2627&context=lhapapers.

112 Paul W. Chambers and Siegfried O. Wolf, "Image-Formation at a Nation's Edge: Thai Perceptions of Its Border Dispute with Cambodia-Implications for South Asia," 2010, 13, http://archiv.ub.uni-heidelberg.de/volltextserver/10459/.

113 "Thai-Cambodia Sour Relations: Thailand Cancels Oil-and-Gas MoU with Cambodia," *The Nation*, accessed January 27, 2016, http://www.nationmultimedia.com/2009/11/06/national/national_30116017.php.

114 "Move to Utilise 2001 MOU on Maritime Negotiations," *The Nation*, October 4, 2011, http://www.nationmultimedia.com/politics/Move-to-utilise-2001-MOU-on-maritime-negotiations-30166779.html.

The most recent joint-development initiative happened in the South China Sea when, in 2009, Brunei and Malaysia agreed upon a commercial joint-arrangement area (CJAA). Under the British protectorate, the Sultanate of Brunei claimed its continental shelf seaward up to 265 nautical miles from the shores in 1954.[115] The relations between the sultanate and Malaysia were calm until the publication of the 1979 Malaysian New Map, which encompassed Brunei's continental shelf. The area became a source of contention as Malaysia claimed the possession of oil-rich Blok L and Block M. The overlapping claims of the two countries did not a result from sovereignty disputes over offshore islands. Malaysia's claim arose from historical facts[116] while Brunei laid its claim on the law of the sea. There was actually a dispute about the sovereignty of Limbang, a Malaysian small district that separates Brunei territories into two separated areas: the Brunei-Muara, Tutong, and Belait districts in the west and the Temburong district in the east. However, Brunei's claim over Limbang was not related to the continental shelf claims, but had an indirect relationship on the conclusion of the maritime disputes. The two sovereign states defended each continental shelf claim until 2009.

Brunei and Malaysia ended their disputes over the overlapping continental shelf in the South China Sea on March 16, 2009 following an exchange of letters between the respective governments.[117] This agreement concluded two stages of negotiations held in 1997, and from 2003 to 2008.[118] In an official statement, Malaysian Prime Minister Abdullah Ahmad Badawi said that "Malaysia and Brunei . . . agreed to establish a final and permanent sea boundary."[119] The statement acknowledges the sovereignty of Brunei

---

115 Renate Haller-Trost, "The Brunei-Malaysia Dispute over Territorial and Maritime Claims in International Law," ed. Clive Schofield and Martin Pratt, *IBRU*, Maritime briefing, 1, no. 3 (1994): 38.

116 Mahathir Mohamad, "Malaysia's Generosity," *Malaysia Today*, April 29, 2010, http://www.malaysia-today.net/malaysias-generosity/.

117 Jeffrey J. Smith, "Brunei and Malaysia Resolve Outstanding Maritime Boundary Issues," *ASIL Law of the Sea Reports* 1 (2010): 1–2, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2296908.

118 J. Ashley Roach, "Malaysia and Brunei: An Analysis of Their Claims in the South China Sea," *CNA Occasional Paper*, 2014, 37, https://www.cna.org/CNA_files/PDF/IOP-2014-U-008434.pdf.

119 Tun Abdullah Ahmad Badawi, "Statement on the Exchange of Letters between Malaysia and Brunei Darussalam, Dated 16 March 2009," Ministry of Foreign Affairs Malaysia, April 30, 2010, https://www.kln.gov.my/archive/content.php?t=7&articleId=735675.

over the continental shelf previously claimed by Malaysia.[120] Moreover, the agreement includes "a commercial arrangement under which Malaysia will be allowed to participate on a commercial basis, to jointly develop the oil and gas resources in this area for a period of 40 years."[121] The joint-development arrangement adopts Ong's third model, in which Malaysia has rights to drill in areas that belong to Brunei.

Both countries could agree on the CJAA because no sovereignty dispute related to the delimitation of the continental shelf, and because the area held an estimated 1 billion barrels of oil.[122] Moreover, the 2009 agreement seems to be a win-win solution for both countries, as Brunei gave up its claim over Limbang to Malaysia.[123] In this case, the 2009 exchange of letters confirmed that the sovereignty of Limbang belonged to Malaysia and that the sovereignty in the maritime parts belonged to Brunei.

This brief discussion of several joint-development arrangements in Southeast Asia provides a basic background in how Southeast Asian countries could agree on joint development in unresolved maritime border disputes. It is common in Southeast Asia that the disputed resource-rich areas can be exploited before agreeing on maritime borders through an interim agreement. This section identifies that countries would choose joint-development arrangements in maritime disputes over resource-rich areas that are free from sovereignty disputes over islands or other maritime features. This finding will be examined in more depth in a discussion of case studies in the Gulf of Thailand. The next section will discuss joint-development agreements established by Malaysia, Thailand, and Vietnam. These case studies demonstrate that the states could agree upon a form of joint-exploitation as a reasonable resolution to overlapping claims.[124]

---

120 Ibid.

121 Ibid.

122 Mohamad, "Malaysia's Generosity."

123 Ibid.

124 Mark J. Valencia and Masahiro Miyoshi, "Southeast Asian Seas: Joint Development of Hydrocarbons in Overlapping Claim Areas?," *Ocean Development and International Law* 16, no. 3 (1986): 214.

B. JOINT DEVELOPMENTS IN THE GULF OF THAILAND

The Gulf of Thailand, historically known as the Gulf of Siam, is one of the most complicated waters in Southeast Asia due to overlapping claims by the coastal states. The Gulf of Thailand is an area that lies between Mui Ca Mau, the southern tip of mainland Vietnam, and the Malaysian coast near Kota Bharu. The gulf encompasses an area of approximately 283,700 square kilometers, whose shores are shared by four ASEAN members: Cambodia, Malaysia, Thailand, and Vietnam.[125] Based on UNCLOS, these states have rights to claim EEZs up to 200 nautical miles[126] and continental shelves up to 260 nautical miles from their coastlines or baselines.[127] However, the Gulf of Thailand's average width itself is just 215 nautical miles, which makes the gulf subject to overlapping EEZ and continental shelf claims.[128] Moreover, the presence of hydrocarbon reserves encourages the coastal states to make their own claims on the EEZ and continental shelves, which hinders agreement on clear maritime boundaries. Several major basins that contain abundant oil and gas reserves are known to be located in the Gulf of Thailand, such as the Chumphon Basin, the Western Basin, the Malay Basin, the Pattani Basin, and the Thai Basin, with the estimated sediment thickness from 1,000 to 4,000 meters, a positive sign for potential hydrocarbon reserves.[129] Among those basins, the Malay and Thai basins are known for gas deposits, which lie at the center of the Gulf of Thailand, an area with the most overlapping claims. The Thai basin's natural gas production capacity is 200 million ft^3 per day and the estimated reserves are 8 trillion ft^3.[130]

---

125 Victor Prescott, *The Gulf of Thailand: Maritime Limits to Conflict and Cooperation* (Kuala Lumpur: Maritime Institute of Malaysia, 1998), 11.

126 "United Nations Convention on the Law of the Sea," Article 57.

127 Ibid. Article 76.

128 Nguyen Hong Thao, "Vietnam's First Maritime Boundary Agreement," *IBRU Boundary and Security Bulletin*, (1997), 74, https://www.dur.ac.uk/resources/ibru/publications/full/bsb5-3_thao.pdf.

129 Morgan and Valencia, *Atlas for Marine Policy in Southeast Asian Seas*, 101.

130 Ibid., 99.

Table 4 shows the summary of continental shelf and EEZ claims in the Gulf of Thailand. Among those overlapping claims, two cases ended up in joint developments and proved to be effective in extracting oil and natural gas. The next paragraphs will discuss those two joint developments, the Malaysia-Thailand JDA and the Malaysia-Vietnam DA, as case studies.

Table 4. Continental Shelf and EEZ Claims in the Gulf of Thailand

Disputed countries	Km^2
Cambodia-South Vietnam	50,000
Cambodia-Thailand	19,900
South Vietnam-Thailand	800
Cambodia-South Vietnam-Thailand	12,400
Malaysia-Thailand	4,500
Malaysia-Vietnam	2,500
Total	88,100

Adapted from: Victor Prescott, *The Gulf of Thailand: Maritime Limits to Conflict and Cooperation* (Kuala Lumpur: Maritime Institute of Malaysia, 1998), 16

1. Malaysia, Thailand, and Vietnam Overlapping Claims

Thailand first claimed its maritime sovereignty in 1958 when it defined straight baselines along the Bay of Bangkok, which it claimed as an historic bay.[131] In 1970, Thailand announced its other baselines in three segments, of which two were located on the eastern and western sides of the Gulf of Thailand. The 1970 claim unified Thailand's small islands within the baselines. On the eastern coast of the gulf, the baseline started from the terminus of the land boundary with Cambodia and continued to link Ko Kut Island, Ko Chang Island, and other small islands. In 1973, Thailand claimed the continental shelf, in which the line elongated from the terminus of the land border with Malaysia to the terminus of Thailand's land border with Cambodia. Thailand's continental shelf claim was subject to dispute because it went beyond the median line with other neighbors.[132] No sovereignty disputes related to the Thailand's continental

131 Prescott, *The Gulf of Thailand*, 19.

132 Ibid., 16.

shelf claim existed at the time it was announced. All of the baselines that generated continental shelf lines were drawn from Thailand's own islands that had no sovereignty issues. The only exception was a base point located in Koh Kut Island that was disputed by Cambodia as discussed in the previous section.

Vietnam, previously South Vietnam, introduced its continental shelf boundary in the gulf on June 9, 1971. Prescott perceives Vietnam's claim as ambitious because it engulfed some of Cambodia's islands, including the ones close to Cambodian shores, and Poulo Wai Island, located 53 nautical miles off Cambodia's mainland.[133] The claim by Vietnam seemed to be a response to Thailand's aggressive maneuver in natural resources exploration, especially after Thailand issued Law No. 2514 on Petroleum on March 26, 1971, which caused a boom in offshore petroleum development.[134] After the fall of South Vietnam, the government of Vietnam asserted the claim by filing an official statement regarding its maritime regimes to the UNCLOS in 1977. The statement provides a legal basis for Vietnam's maritime claims. It states, "The Socialist Republic of Viet Nam exercises sovereign rights over the Vietnamese continental shelf," and all disputes arising from Vietnamese claims "will be dealt . . . in accordance with the principle of defending the sovereignty and interests of the Socialist Republic of Viet Nam."[135] After that, Vietnam maintained its continental shelf claim in the Gulf of Thailand until the agreement with Malaysia in 1992. Vietnam had no disputed islands with Malaysia and Thailand when it declared its continental shelf. One sovereignty dispute related to Vietnam's overlapping claims was the sovereignty issue of Phu Quoc Island, which caused overlapping claims with Cambodia.

Malaysia's first claim of continental shelf was announced in 1966 through the Malaysia Continental Shelf Act 1966. At that time, the Act defined the continental shelf as:

---

133 Ibid., 14.

134 Thao, "Vietnam's First Maritime Boundary Agreement," 74.

135 *Statement of the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf of 12 May 1977*, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/VNM_1977_Statement.pdf.

> The sea-bed and subsoil of submarine areas adjacent to the coast of Malaysia but beyond the limits of the territorial waters of the States, the surface of which lies at a depth no greater than two hundred meters below the surface of the sea, or, where the depth of the superadjacent waters admits of the exploitation of the natural resources of the said areas, at any greater depth.[136]

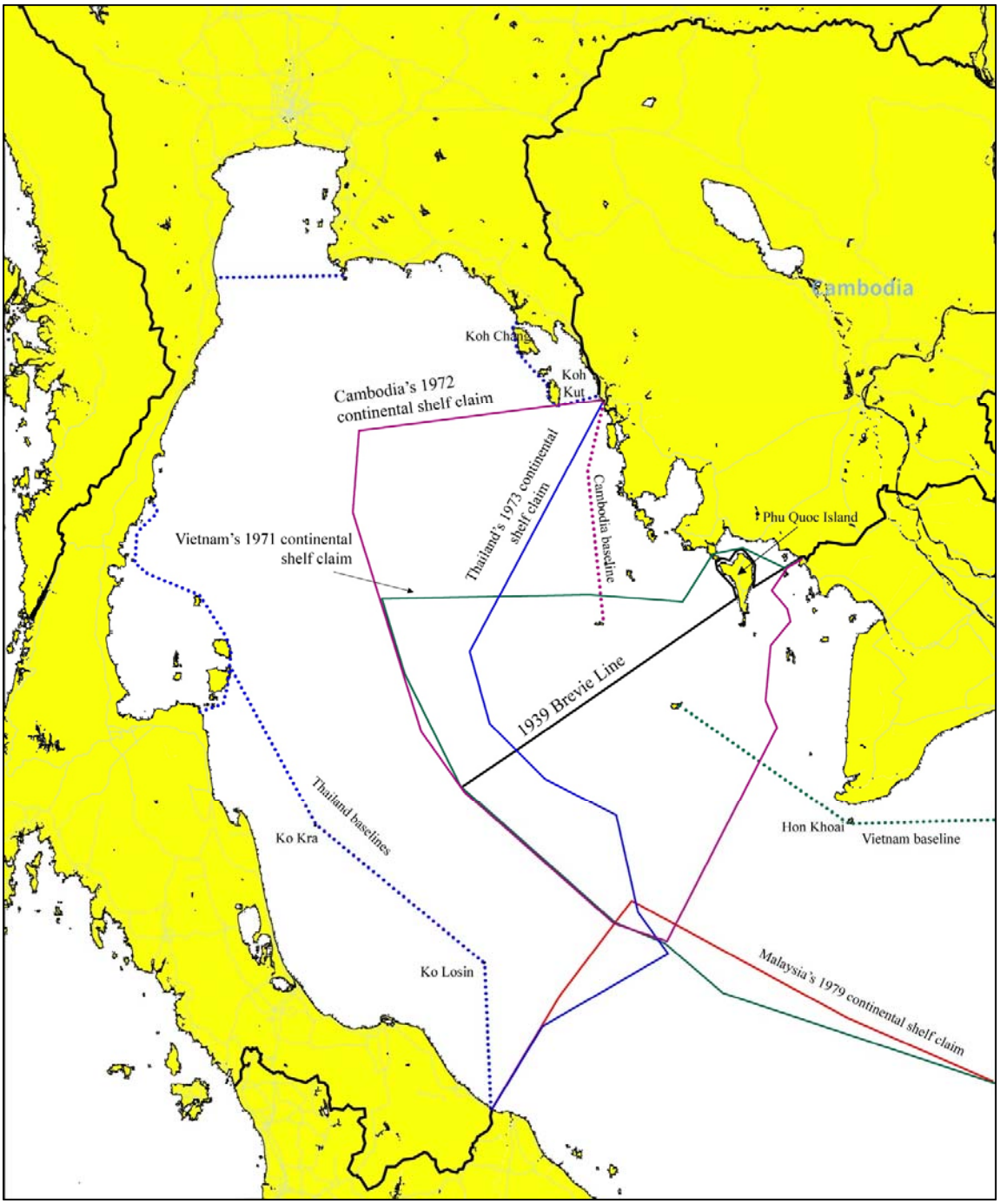
The Malaysian government created the Act after the Convention on the Continental Shelf went into force in June 1964, in which Malaysia was one the participants. At that time, the claim was unclear since the convention did not mention a specific distance from the coastline to determine country's continental shelf. Malaysia demonstrated a more systematic effort to define its continental shelf limit when it published the New Map in 1979. The New Map has been a source of territorial dispute with eight neighboring countries, including Thailand and Vietnam in the Gulf of Thailand. The publication of the New Map was primarily Malaysia's unilateral claim without preliminary discussions with neighboring countries. Such action was against "ASEAN's principle of mutual respect and the ASEAN spirit of cooperation, which should have entailed discussions or exchange of views" before publishing something that could lead to conflict.[137] With Thailand, Malaysia stretched its continental shelf without considering Ko Losin as Thailand's basepoint (Figure 5). Malaysia also ignored the presence of Vietnam's southern offshore islands in determining the continental shelf, resulting in an area overlapping Vietnam's claim. The continental shelf limit only accounted for Mui Ca Mau, the southern tip of Vietnam's mainland, as a basis to define equidistant lines. Malaysia's continental shelf claims had nothing to do with any sovereignty disputes, but only reflected their effort to extract as many benefits as possible from the claimed continental shelves.

---

136 *Continental Shelf Act, 1966*, *Act 83*, 1966, http://faolex.fao.org/docs/pdf/mal1872.pdf.

137 Stephen C. Druce and Efri Yoni Baikoeni, "Circumventing Conflict: The Indonesia-Malaysia Ambalat Block Dispute," in *Contermporary Conflicts in Southeast Asia: Towards a New ASEAN Way of Conflict Management*, ed. Mikio Oishi (Singapore: Springer, 2016), 141.

Figure 5. Overlapping Maritime Claims in the Gulf of Thailand



For illustrative purposes only; drawing is not to scale. Adapted from: J. R. V. Prescott, *The Gulf of Thailand: Maritime Limits to Conflict and Cooperation* (Kuala Lumpur: Maritime Institute of Malaysia, 1998)

2. The Malaysia-Thailand Joint-Development Area (MTJDA)

Thailand's extensive oil and gas exploration in the Gulf of Thailand in the 1970s triggered the decision to embark on the joint-development agreement. Thailand was the first coastal country in the Gulf of Thailand to conduct resource exploration. Thailand's government conducted the first offshore exploration after enacting the 1971 Petroleum Act. Prior to the exploration, the Thai government had granted exploration rights to six international oil companies for petroleum in 17 blocks in the Gulf of Thailand.[138] The first offshore drilling was conducted by Union in the Pattani Basin in 1973.[139] Besides Pattani Basin, Thailand knew that the Malay Basin also contained promising natural resources and planned to go south for further exploration. Nonetheless, Malaysia's claim hampered Thailand's intention to expand southward. Malaysia's continental shelf claim encroached on Thailand's because the 1979 New Map ignored Thailand's straight baselines that utilized Ko Losin and Ko Kra, islands off Thailand's eastern coast, as basepoints. Malaysia did that because Thailand only defined its baselines in 1992 based on basepoints located in those islands.[140] It did not mean that Malaysia contested the sovereignty of Ko Losin and Ko Kra. The sovereignty status of offshore islands east of the peninsula was settled through the 1909 Anglo-Siamese Treaty, which defined the possession of small islands off the Eastern Coast of the Peninsula clearly. The treaty says that all islands that lay "south of the parallel of latitude drawn from the point where the Sungei Golok reaches the coast . . . shall be transferred to Great Britain, and all islands to the north of that parallel shall remain to Siam."[141] This article was never challenged by Malaysia thus making the area free of sovereignty disputes at the time Malaysia and Thailand agreed on joint development.

---

138 Mark J. Valencia, *The South China Sea: Hydrocarbon Potential and Possibilities of Joint Development : Proceedings of the EAPI/CCOP Workshop, East-West Center, Honolulu, Hawaii, 5-12 August 1980*, 1300, http://public.eblib.com/choice/publicfullrecord.aspx?p=1822292.

139 "Thailand: Exploration/Development History," *CCOP EPF*, last updated August 8, 2002, http://www.ccop.or.th/epf/thailand/thailand_explor.html.

140 Prescott, *The Gulf of Thailand*, 67.

141 "Malaysia-Thailand Boundary," *International Boundary Study* (Office of the Geographer, US Department of State, November 15, 1965), 5.

Malaysia and Thailand signed the MoU of joint development in February 1979. Both countries agreed on jointly developing the overlapped area of 7,250 square kilometers, which was known as the MTJDA. Initially, no progress had been made by the two countries following the MoU. The two countries only created the Malaysia-Thailand Joint Authority (MTJA) on May 1990. The body headquartered in Kuala Lumpur with the primary function of managing the MTJDA. The 1990 agreement was to apply the 1979 MoU between the two countries that mandated the establishment of a "'Joint Authority'. . . for the purpose of the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping area."[142] The MTJA awarded the first production sharing contract (PSC) in 1994 to two groups of contractors, which eventually got their first gas 2005.[143]

The MTJDA operates under the MTJA, a joint institution created to control "all exploration and exploitation" in the MTJDA, including the awarding of exploration rights.[144] The MTJDA itself is located in the North Malay Basin, a gas- and oil-rich area that has sediment thickness of more than 8 km.[145] To date, 72 exploration and appraisal wells have been drilled, 27 gas fields have been declared, and 217 development wells have been drilled in the MTJDA.[146] All of them are spread in three different blocks: A-18, B-17, and C-19. Initial production in block A-18 resulted in 390 million cubic feet per day of natural gas and the second phase of exploitation yielded 400 million cubic feet per day of gas supply.[147] The first exploitation in Block B-17 happened in 2009 with a

142 Charney and Alexander, *International Maritime Boundaries*, 1108.

143 Jittima Mantajit, "Joint Development in the Gulf of Thailand: Malaysia-Thailand Joint Development Area" (Thailand Department of Mineral Fuels: Ministry of Energy, June 2011), 3, http://cil.nus.edu.sg/wp/wp-content/uploads/2011/06/Session-5-JM-June11-pdf.pdf.

144 "MTJA—Our Works," *Malaysia-Thailand Joint Authority*, accessed February 10, 2016, http://www.mtja.org/ourwork.html.

145 "Petroleum Potential and Exploration," *Malaysia-Thailand Joint Authority*, accessed November 2, 2015, http://www.mtja.org/petroleumpotential.php.

146 Ibid.

147 "Malaysia: International Energy Data and Analysis," *US Energy Information Administration*, accessed February 10, 2016, https://www.eia.gov/beta/international/analysis.cfm?iso=MYS.

capacity of 270 million cubic feet per day of gas.[148] These results demonstrate how rich the MTJDA is in natural resources.

3. The Malaysia-Vietnam Defined Area (DA)

In 1992, Malaysia and Vietnam agreed to a similar joint-development arrangement to the Malaysia-Thailand mode for the purpose of exploiting petroleum resources for the mutual benefit of disputing parties. Malaysia and Vietnam had a total of 2,500 square kilometers overlapping continental shelves in the Gulf of Thailand. The overlapping claims arose from uncoordinated unilateral claims of both countries. Malaysia measured its continental shelf outer limits from its coast without considering Vietnam's Hon Khoai Island, which was used as basepoint by Vietnam (Figure 2). On the other hand, Vietnam generated its continental shelf from Hon Khoai Island. This resulted in a long (more than 100 miles) but narrow (less than 10 miles) overlapping area which was known as the DA.[149] The overlapping claims were then merely a matter of the law of the sea interpretation rather than sovereignty issues. Malaysia and Vietnam do not border each other as they are separated by the mouth of the Gulf of Thailand 200 nautical miles away.

The effort to approach joint development as a solution for the overlapping claims first began in May 1991 when Vietnam protested Malaysian exploration activity in the area.[150] The disputed area lay on the east of the MTJDA, also in the Malay Basin, which was considered to be a resource-rich area. In the height of the disputes, Malaysia granted three concessions to foreign companies. Both countries started to discuss the possibility of joint development after the announcement by Hamilton, one of operators, that a test conducted in one of the oil wells in the disputing area pumped an average of 4,400 barrels of oil per day.[151] Intense bilateral negotiations finally reached an agreement of joint development in the disputed area. In the MoU, both parties agreed to cooperate in a

148 Ibid.

149 Thao, "Joint Development in the Gulf of Thailand," 82.

150 Ibid., 81.

151 Ibid.

joint-venture model and nominated Petronas and Petrovietnam in take charge of exploration and exploitation in the DA.[152] This arrangement did not obligate Malaysia and Vietnam from establishing a joint authority as in the Malaysia-Thailand agreement. While Malaysia and Thailand needed 15 years to realize the 1979 MoU, Malaysia-Vietnam cooperation needed only four years to extract the first oil from the Bunga Kekwa field.[153] The Malaysia-Vietnam model had demonstrated better progress than the MTJDA because the arrangement was much simpler, as it was more flexible for the companies to conduct any exploration or exploitation

C. SUMMARY

When countries do not agree on maritime delimitation in resource-rich areas, they can establish joint-development arrangement as a temporary solution. The UNCLOS addresses the adoption of joint development as a provisional arrangement, which has been practiced in many cases around the world. In Southeast Asia, two factors offer strong incentives for the disputed countries to compromise on a form of joint-development: resource-rich areas and undisputed islands and/or maritime features. All joint-development practices in Southeast Asia take place in areas without disputed land territory and abundant natural resources. The situations in the Gulf of Thailand provide good examples of how the contesting states will agree on joint-development in disputed waters that conform to these two variables. Another factor that influences a country to adopt joint development is good bilateral relations with the other country. What was experienced by Cambodia and Thailand regarding their joint-development arrangement shows that conducive bilateral relations are the principle necessity for the joint development to progress. Finally, the case study of the Gulf of Thailand can show other regions in Southeast Asia that peaceful resolution can be achieved through a provisional agreement if the disputing parties cannot reach permanent bilateral agreement.

---

[152] Charney and Alexander, *International Maritime Boundaries*, 1993, 2:2342.

[153] Thao, "Joint Development in the Gulf of Thailand," 84.

THIS PAGE INTENTIONALLY LEFT BLANK

IV. THIRD-PARTY SETTLEMENT

Third-party settlement through the international organization is a new trend for Southeast Asian countries to resolve their disputes with neighbors. However, for the countries in this region, especially for the ASEAN members, resolving disputes through the international organization is not preferable. ASEAN, through the ASEAN Charter, mandates its members to resolve the disputes "through dialogue, consultation, and negotiation."[154] Further, the Charter states that unresolved disputes should be brought to the ASEAN Summit, meaning that the disputes should be resolved internally, within the frame of ASEAN.[155] Such norms do not prevent ASEAN members from avoiding use of external third-party mechanisms; some maritime dispute cases were brought to the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), or the Permanent Court of Arbitration (PCA). The tendency of ASEAN members to seek international assistance is often criticized by scholars because it reflects ASEAN's incapability to resolve intra-ASEAN disputes.

If the norms mandated in the ASEAN Charter fail to prevent the members from seeking third-party settlement, it is worthwhile to know under what conditions Southeast Asian countries seek third-party mechanisms to solve their maritime disputes. To answer this question, this chapter will investigate a maritime dispute between Malaysia and Singapore over Pedra Branca, Middle Rocks, and South Ledge in the Singapore Strait as a case study by analyzing two variables: economic value and island sovereignty. Other case studies to be analyzed in this chapter are the dispute over the Sipadan Ligitan Islands between Indonesia and Malaysia, and the dispute over the Singapore reclamation works involving Malaysia and Singapore. The analysis over the economic value of the disputed waters and the sovereignty status of the islands will show that there are no common patterns in Southeast Asia for this type of settlement. This is because the number of disputes that are concluded through this means is very limited. Nevertheless, maritime

154 "The ASEAN Charter" (ASEAN Secretariat, 2008), 24, http://www.asean.org/archive/publications/ASEAN-Charter.pdf.

155 Ibid., 25.

disputes that involved disputes over island sovereignty in resource-poor areas seem to be the strongest case for the countries to move towards third-party settlement; the presence of disputed islands is likely to end bilateral negotiations in a stalemate, while the absence of natural resources discourages them from taking military action.

A. THIRD-PARTY SETTLEMENT IN THE WORLD AND IN SOUTHEAST ASIA

International arbitration is one of the available solutions, besides provisional arrangements for the disputing countries, to settle their unresolved maritime disputes. The possibility of using international arbitrations as a means for dispute settlement is set in the UNCLOS. According to the Article 287, UNCLOS members are free to choose one or more of the following to solve their disputes: 1) the ITLOS, 2) the ICJ, 3) *an arbitral tribunal*, and 4) a "special arbitral tribunal."[156] The ITLOS was established by the mandate of the 3rd UNCLOS as a means to settle disputes emerging from different understandings and applications of the UNCLOS. The ITLOS is an independent organization even though it has close relations with the United Nations; the Tribunal has observer status in the General Assembly.[157] The ICJ, on the other hand, is a legal body under the United Nations. The ICJ's roles are to solve any legal disputes submitted by the United Nations members, not only limited to the interpretation of the UNCLOS or maritime matters. The next form of arbitration, an arbitral tribunal, is the default means of disputing settlements if the disputing states do not agree on a particular form of arbitration. The arbitral tribunal is an internal arbitration within the UNCLOS for the signatories. Unlike institutional arbitration like the ICJ or the ITLOS, the arbitral tribunal can be categorized as *ad hoc*, since it does not have a permanent institution. The arbitral tribunal exists only when parties initiate it. It consists of five members who are nominated by the disputing parties as mentioned in UNCLOS Article 3 Annex VII.[158] The most recent use of the arbitral tribunal was for the disputes in the South China Sea

156 *United Nations Convention on the Law of the Sea, 131,* accessed July 23, 2015, http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

157 "General Information," International Tribunal for the Law of the Sea, accessed December 19, 2015, https://www.itlos.org/en/general-information/.

158 *United Nations Convention on the Law of the Sea*., Article 4 Annex VII.

between the Philippines and China, where the Philippines were willing to bring the disputes to international arbitration while China rejected such an initiative. Last, the special arbitral tribunal is to solve disputes that require experts in "(1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation."[159] With such various forms of tribunals, disputing countries could choose any of them to solve their maritime disputes in circumstances that require international arbitration.

Although it is relatively rare in Southeast Asia, dispute settlements through international arbitrations have been widely used worldwide. The first case brought to the ICJ was in 1947 when the United Kingdom sought compensation from Albania after a couple of incidents in the Corfu Channel.[160] To date, 160 cases have been submitted to the ICJ for both contentious cases and advisory proceedings.[161] Among them, 25 cases are related to the maritime disputes. The most recent ongoing maritime disputes brought to the ICJ are the maritime delimitation in the Caribbean Sea and the Pacific Ocean between Costa Rica and Nicaragua (submitted in February 2014) and the disputes between Somalia and Kenya over maritime regimes in the Indian Ocean (submitted in August 2014). In the ITLOS, a total of 25 cases have been resolved, including maritime delimitation disputes between Bangladesh and Myanmar in the Bay of Bengal and a dispute over the maritime boundary between Ghana and Ivory Coast in the Atlantic Ocean.[162] The two international tribunal bodies provide useful mechanisms to solve various international disputes. The various means of dispute settlement by a third-party organization, as stated in the UNCLOS, are intended to accommodate competing countries in resolving any possible disputes in flexible and peaceful ways.

---

159 Ibid., 190.

160 For detail of the case, please see Quincy Wright, "The Corfu Channel Case," *The American Journal of International Law* 43, no. 3 (1949): 491–94, doi:10.2307/2193642.

161 "List of Cases Referred to the Court since 1946 by Date of Introduction," International Court of Justice, accessed January 4, 2016, http://www.icj-cij.org/docket/index.php?p1=3&p2=2.

162 "List of Cases," International Tribunal for the Law of the Sea, accessed January 4, 2016, https://www.itlos.org/cases/list-of-cases/.

In Southeast Asia, dispute settlements through the facilitation of international tribunals are uncommon; some scholars even judge that such a mechanism reflects ASEAN's inability to resolve intra-ASEAN conflicts through internal mechanism.[163] The first case brought to the international tribunal was a dispute concerning the sovereignty between Cambodia and Thailand over the Preah Vihear Temple in 1959. That was the only case of international arbitration among Southeast Asian countries until 1998 when Indonesia and Malaysia went jointly to the ICJ to seek an answer of sovereignty of Sipadan and Ligitan Islands. This case was the first case in the region brought to international arbitration after the establishment of ASEAN in 1967. Five years later, Malaysia and Singapore were competing in two different cases and sought solutions to both the ICJ and ITLOS. Both nations submitted a dispute over the sovereignty of Pedra Branca, Middle Rocks, and South Ledge—small maritime features at the eastern end of the Singapore Strait—to the ICJ in February 2003. In September of the same year, the governments of both countries, initiated by Malaysia, filed another dispute to the ITLOS regarding Singapore's reclamation works in the Johor Strait. Another effort to consult the ICJ was taken by Cambodia and Thailand in 2011 following several military clashes in a dispute over territorial borders in the vicinity of the Preah Vihear Temple. In 2012, Myanmar concluded its maritime boundaries with Bangladesh through the ITLOS. The last example of the involvement of the international court in Southeast Asia was when the Philippines brought the disputes in the South China Sea against China. Based on those cases, a third-party settlement method is rarely chosen by the ASEAN members as the dispute mechanism, considering the fact that there have been only three disputes between ASEAN members—not to mention the 1959 Preah Vihear case—and two cases involving non-ASEAN members brought to the international arbitrations since the establishment of ASEAN. But if we see that all five cases happened since 1998 to date, then the third-party settlement could be considered a new trend in dispute settlement in the region.

The experience of Southeast Asian countries in engaging international bodies to settle interstate conflicts also provides interesting lessons learned. Table 5 shows all

163 Amitav Acharya, "ASEAN at 40: Mid-Life Rejuvenation?," 2009, http://www.amitavacharya.com/sites/default/files/ASEAN's%20Progress%20and%20Perils.pdf.

maritime disputes in Southeast Asia that have been brought to international arbitrations. There have been only three types of international arbitration involved in Southeast Asian conflict resolutions: the ICJ, the ITLOS, and the *ad hoc* arbitral tribunal. The selections of these arbitrations are mainly because the nature of the disputes, which can be categorized into three different groups. Out of six, three cases dealt exclusively with the issue of sovereignty in the land or islands. The disputes of Preah Vihear Temple; Sipadan and Ligitan; and Pedra Branca, Middle Rocks, and South Ledge were the issues of sovereignty over islands disputed between competing countries. The dispute over the Singapore reclamation works and the Myanmar-Bangladesh dispute belong to the next group, namely the dispute about maritime boundaries that require UNCLOS interpretation. Last, China's nine-dashed line idea that was rejected by the Philippines dealt with both island sovereignty and UNCLOS interpretation. Based on these categorizations, ASEAN members prefer for the ICJ to solve disputes over land or island sovereignty, while the ITLOS was selected to settle matters specifically related to the UNCLOS articles.

Table 5. Southeast Asian Maritime Disputes Brought to International Arbitrations

Dispute	**Economic Value**	**Sovereignty Claim**	**Type of Arbitration**	**Outcome**
Preah Vihear case between Cambodia and Thailand	No	Yes	ICJ	The Court awarded the temple to Cambodia.
Sipadan Ligitan between Indonesia and Malaysia	Yes	Yes	ICJ	Sovereignty issues were settled. The dispute remains due to undelimited maritime boundaries
Pedra Branca between Singapore and Malaysia	No	Yes	ICJ	Settled
Singapore reclamation works between Singapore and Malaysia	No	No	ITLOS	Settled

Dispute	Economic Value	Sovereignty Claim	Type of Arbitration	Outcome
South China Sea dispute between Philippines and China	Yes	Yes	Arbitral Tribunal	On-going. China rejected the initiative.
Continental Shelf boundary between Myanmar and Bangladesh	Yes	No	ITLOS	Settled

Adapted from: "Case Concerning the Temple of Preah Vihear (Merits): Judgment of 15 June 1962" (Hague: International Court of Justice, 1962), http://www.icj-cij.org/docket/files/45/4873.pdf; "Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia): Judgment of 17 December 2002" (Hague: International Court of Justice, 2002), http://www.icj-cij.org/docket/files/102/7714.pdf; "Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore): Summary of the Judgement of 23 May 2008," (Hague: International Court of Justice, 2008), http://www.icj-cij.org/docket/files/130/14506.pdf; Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore): Provisional Measures: Order (Hamburg: International Tribunal for the Law of the Sea, 2003), https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_12/Order.08.10.03.E.pdf; Jay Batongbacal, "Arbitration 101: Philippines v. China," Asia Maritime Transparency Initiative, January 21, 2015, http://amti.csis.org/arbitration-101-philippines-v-china/; "Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar): Order of 19 August 2011" (Hamburg: International Tribunal for the Law of the Sea, 2011), https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/16_order_190811_en.pdf.

The last category, the dispute between the Philippines and China in the South China Sea, could fall into the two previous categories, thus could employ either the ICJ or the ITLOS. The Philippines, however, could only bring the dispute to the arbitral tribunal (the third option under Article 287) because China, as the opposition, rejected internationalizing the dispute, including bringing it to the international arbitration. This situation made the arbitral tribunal the only feasible solution based on Article 287(5) of the UNCLOS which states: "if the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree."[164] Article 9 Annex VII further rules that the absence of one of the parties does not cause the process arbitration

164 *United Nations Convention on the Law of the Sea,* Article 287(5).

process to stop.[165] The arbitral tribunal consists of five members, of which the Philippines appointed one and the President of the ITLOS appointed the remaining four.[166] The established Tribunal held its first meeting on July 11, 2013 and conducted subsequent meetings that resulted in the issuance of the Rules of Procedure on August 27. In the Rules of Procedures, the Tribunal designated the PCA as the register institution for the future proceedings.[167] The PCA itself is not a court as it lacks permanent judges. It is "a permanent framework for arbitral tribunals constituted to resolve specific disputes."[168] PCA's role in the case between the Philippines and China was just to facilitate the arbitral tribunal to proceed and to provide administrative service during the whole process.

Despite the differences, most of the maritime cases share common patterns. The Sipadan Ligitan, Pedra Branca, and South China Sea disputes were about island sovereignties. Another prominent variable is the value of disputed areas; most instances of the third-party settlements took place in resource-poor areas. The next sections will discuss the Pedra Branca dispute as a case study and the other two cases as comparisons.

B. CASE STUDY: PEDRA BRANCA, MIDDLE ROCKS, AND SOUTH LEDGE DISPUTE

1. Conflict Overview/ Historical Background

The dispute between Malaysia and Singapore over maritime features at the eastern end of the Singapore Strait was one of several disagreements in the two countries' history that were finally concluded by the decision of the ICJ. The concern of the two neighboring countries was initially about the sovereignty of Pedra Branca, or Pulau Batu Puteh, which later included the two other maritime features in its vicinity: Middle Rocks and South Ledge. Pedra Branca is a 137-meter-long and 60-meter-wide-average granite

165 Ibid., Article 9 Annex VII.

166 Jay Batongbacal, "Arbitration 101: Philippines v. China," *Asia Maritime Transparency Initiative*, January 21, 2015, http://amti.csis.org/arbitration-101-philippines-v-china/.

167 "PCA Case Number 2013-19 between the Republic of the Philippines and the People's Republic of China: Rules of Procedures," Permanenet Court of Arbitration (Arbitral Tribunal Constituted Under Annex VII to the 1982 UNCLOS 2013).

168 "Structure," Permanent Court of Arbitration, accessed February 16, 2016, https://pca-cpa.org/en/about/structure/.

island that is situated just 7.6 nautical miles north of Indonesia's Bintan Island.[169] The two terms, Portuguese "Pedra Branca" and Malay "Batu Puteh" refer to the same meaning: the white rock, referring to the rock's white appearance, covered by groups of sea birds.[170] Middle Rocks are two small rocks located 1,200 yards south of Pedra Branca that are permanently above water; South Ledge, on the other hand, is another rock that is only visible during low tide.[171] The dispute arose when Malaysia issued the 1979 New Map that designated Pedra Branca as Malaysia's territory. Singapore first sent a diplomatic note in 1980 to protest Malaysia's claim, which later gave rise to a series of diplomatic efforts between the two countries. Despite intense diplomatic negotiations between from the 1980s to the 1990s, both governments failed to resolve the dispute, thus bringing the case to the ICJ in 2003. The scope of the dispute then widened when Malaysia and Singapore included the sovereignty issue of Middle Rocks and South Ledge in their case to the ICJ. In a decision dated May 23, 2008, the court eventually awarded Pedra Branca to Singapore and Middle Rocks to Malaysia, and left the status of South Ledge unresolved until both countries delimit fixed maritime boundaries in the areas.

It took more than twenty years from the first protest lodged by Singapore until the ICJ decision. During that period, both governments committed to engage in diplomatic negotiations up to the Prime Minister Level. At least three serious discussions between the leaders of the two countries had been held concerning the issue of Pedra Branca from 1980 to 1991.[172] Following the 1980 diplomatic protest, Singapore's Lee Kuan Yew and Malaysia's Dato Hussein Onn discussed the issue, finally agreeing to solve the dispute peacefully. These leaders' statements managed to keep the dispute in a relatively peaceful state, even though Singapore's initiative to conduct a naval blockade around Pedra Branca later in 1986 heated up both states' relations.[173] The diplomatic effort progressed

169 International Court of Justice, "Summary of the Judgement," 1.

170 Kadir Mohamad, *Malaysia Singapore: Fifty Years of Contentions, 1965-2015* (Kuala Lumpur: The Other Press, 2015), 89.

171 International Court of Justice, "Summary of the Judgement," 2.

172 Kadir Mohamad, "Pacific Settlement of Disputes Based on International Law: Malaysia's Experiences at the International Law Court of Justice," Occasional Paper, no. 1/2008 (Kuala Lumpur: Institute of Diplomacy and Foreign Relations (IDFR), Ministry of Foreign Affairs, Malaysia, 2008), 2–3.

173 Kadir Mohamad, *Malaysia Singapore*, 2015, 111.

a little bit after Lee Kuan Yew and Mahathir Mohamad agreed to having document exchanges to prove the rock's sovereignty in the next year.[174] In 1989, however, Singapore proposed to bring the dispute to an international arbitration, which Malaysia did not agree to.[175] Both countries' leaders still committed to resolve the dispute bilaterally, which was concluded by the submissions of each memorandum to support each claim in 1992. From this point onward, the negotiations were held at the ministerial level by conducting two rounds of bilateral talks. Singapore surprisingly brought the issue of Middle Rocks and South Ledge in addition to Pedra Branca to the first round of talks in 1993.[176] Because Kuala Lumpur perceived this behavior as uncooperative, the progress of diplomatic talks was hampered.[177] The second round, held in the following year, eventually failed to advance as both parties were unwilling to compromise on each claim. Facing such situations put the bilateral efforts in a stalemate, thus leading the political leaders, Goh Chok Tong and Mahathir Mohamad, to take legal action by bringing the dispute to the ICJ.

The process at the ICJ took several years to complete. After agreeing to use the international court, both Malaysia and Singapore had to finalize and sign a Special Agreement required for the Statutes of the ICJ non-signatories; this was not completed until 2003.[178] There was a necessary to pause the discussion from 1997 to 2002 to "enable Malaysia . . . to settle another set of disputes with Indonesia concerning sovereignty over the islands of Ligitan and Sipadan."[179] The signed Special Agreement mentions that "the Court is requested to determine whether sovereignty over : (a) Pedra Branca/Pulau Batu Puteh; (b) Middle Rocks; (c) South Ledge, belongs to Malaysia or the

174 Kadir Mohamad, *Pacific Settlement of Disputes Based on International Law*, 2.

175 "International Court of Justice – Case Concerning Sovereignty over Pedra Branca, Middle Rocks and South Ledge," Ministry of Foreign Affairs: Singapore, accessed January 10, 2016, http://www.mfa.gov.sg/content/mfa/media_centre/special_events/pedrabranca.html.

176 International Court of Justice, "Summary of the Judgement," 4.

177 Kadir Mohamad, *Pacific Settlement of Disputes Based on International Law*, 3.

178 Kadir Mohamad, *Malaysia Singapore*, 2015, 113.

179 Ibid., 113–4.

Republic of Singapore."[180] The process at the Court itself consisted of three phases: the written proceedings, the oral proceedings, and the judgment. Both parties developed their arguments in written and hearing phases before the sixteen judges made the final decision. After reviewing each party's pleadings and arguments, the Court issued the final judgment in May 23, 2008 in a 185-page report, which awarded Pedra Branca to Singapore, Middle Rocks as Malaysia's, and put off the legal status of South Ledge until Malaysia and Singapore finalize their maritime boundaries in the surrounding waters. The Court perceived that sovereignty of Pedra Branca had been passed to Singapore in 1980 based on the principle of effective occupation showed by the two parties, in which Singapore demonstrated more convincing acts in exercising sovereignty than Malaysia.[181] For Middle Rocks, the Court did not see any significant conduct performed by both parties to demonstrate sovereignty. In consequence, the judges decided that the ownership of Middle Rocks remained with Malaysia as the successor of the Johor sultanate.[182] South Ledge, on the other hand, was treated as a unique feature due to its physical condition, which appears only during low tide so that it could not generate maritime zones. This condition made the ICJ decided that "the ownership of South Ledge . . . belongs to the State in the territorial waters of which it is located."[183] This decision ended the long-standing dispute between Malaysia and Singapore. Both countries showed their respect for international law and commitment to solve the dispute peacefully in the spirit of the TAC.

2. Economic Values

Pedra Branca, Middle Rocks, and South Ledge are located in areas that do not yield significant natural resources. The *Atlas for Marine Policy in Southeast Asian Seas* contains maps showing the absence of oil and gas deposits as well as undiscovered oil

[180] Malaysia Minister of Foreign Affairs and Republic of Singapore Minister for Foreign Affairs, "Special Agreement" (International Court of Justice, July 24, 2003), 6, http://www.icj-cij.org/docket/files/130/1785.pdf.

[181] International Court of Justice, "Summary of the Judgement," 11–2.

[182] Ibid., 12.

[183] Ibid.

and gas potential in the Strait of Singapore.[184] In its memorial, Malaysia mentioned the issue of natural resources in the disputed areas. Two agreements were concluded between the Malaysian government and two petroleum companies, Continental Oil Company of Malaysia and Esso Exploration Malaysia Inc., regarding rights of explorations in the whole Western Malaysia continental shelf.[185] The attached map of the concession area clearly shows the location of Pedra Branca was included within the concession area.[186] This evidence, however, cannot conclude that the areas have potential natural resource reserves. There has been no single exploitation conducted by any coastal state in the areas since 1968.

Another economic value that might be taken into consideration was the fishing activities. Historically, the waters surrounding Pedra Branca was a place for indigenous people living along the coasts called *orang laut* (men of the sea) to fish. Around a thousand Johor fishermen still currently operate in the areas as their livelihood; the areas are famous sources to catch the galama kuning, an expensive, rare fish.[187] The fisheries had been one of the sources of conflict when the Singapore Navy imposed a blockade around Pedra Branca, preventing any unauthorized parties, including the fishermen, from approaching the island.[188] This dispute was then resolved by the two governments following the ICJ decision with Singapore opening the waters around Pedra Branca for traditional fishing activities.[189] Even though there are still active fisheries in the areas, the significance of this sector to both countries economy is minimal. The economic factor was not the motive for Malaysia and Singapore to claim Pedra Branca, Middle Rocks,

---

184 Morgan and Valencia, *Atlas for Marine Policy in Southeast Asian Seas*, 101–3.

185 "Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks, and South Ledge: Malaysia/Singapore: Memorial of Malaysia," March 25, 2004, 119, http://www.icj-cij.org/docket/files/130/14139.pdf.

186 Ibid., 120.

187 "Republic's Claim a Sore Point with 1,000 Coastal Fishermen," *New Straits Times (Malaysia)*, July 24, 2008, http://www.redorbit.com/news/science/1492633/republics_claim_a_sore_point_with_1000_coastal_fishermen/.

188 Kadir Mohamad, *Malaysia Singapore*, 111.

189 "Pedra Branca `open' to Fishermen," *New Straits Times (Malaysia)*, June 7, 2008.

and South Ledge. The areas are valuable for their strategic location, as a hub between the South China Sea and the Singapore Strait, rather than for their economic value.

3. Island Status/ Sovereignty

The case of Pedra Branca, Middle Rocks, and South Ledge was a dispute over island or maritime feature sovereignty. The bottom line of this case was a debate about whether those features were categorized as *terra nullius* or *uti possidetis juris.* Both parties used historical narratives backed by relevant documents to strengthen their arguments. The ICJ then examined each party's arguments and proofs to yield objective and fair decisions. The ICJ also considered the principle of modern territorial acquisition based on international law when it judged Pedra Branca, Middle Rocks, and South Ledge as *terra nullius.* According to Peter Malanczuk, the transfer of sovereignty over a territory with uncertain title can be classified as one of the following: cession, occupation, prescription, operations of nature, creation, adjudication, and conquest.[190] In Pedra Branca and Middle Rocks cases, the final judgment was based on the effective occupation principle performed by both Malaysia and Singapore.

Malaysia's claim regarding Pedra Branca was based on an argument that Pedra Branca lies in the areas that were previously known within the Johor Sultanate territory, and that Malaysia is the only legitimate successor of the sultanate. Malaysia rejected the *terra nullius* claim by saying in the written memorial that it "has an original title to Pulau Batu Puteh of long standing."[191] The most obvious argument according to Kuala Lumpur was that the rock is situated closer to Malaysia than Singapore (6.6 compared to 25.5 nautical miles) and within Malaysian territorial waters (Figure 6). The continuous presence of *orang laut* in Pedra Branca, inhabitants living along the islands along the coast of Malay Peninsula that were subjects of the Sultanate, affirmed the sovereignty of Johor.[192] A major political change in the region in 1824, when the British and the Dutch defined their sphere of influence, kept Pedra Branca under the sovereignty of the Johor

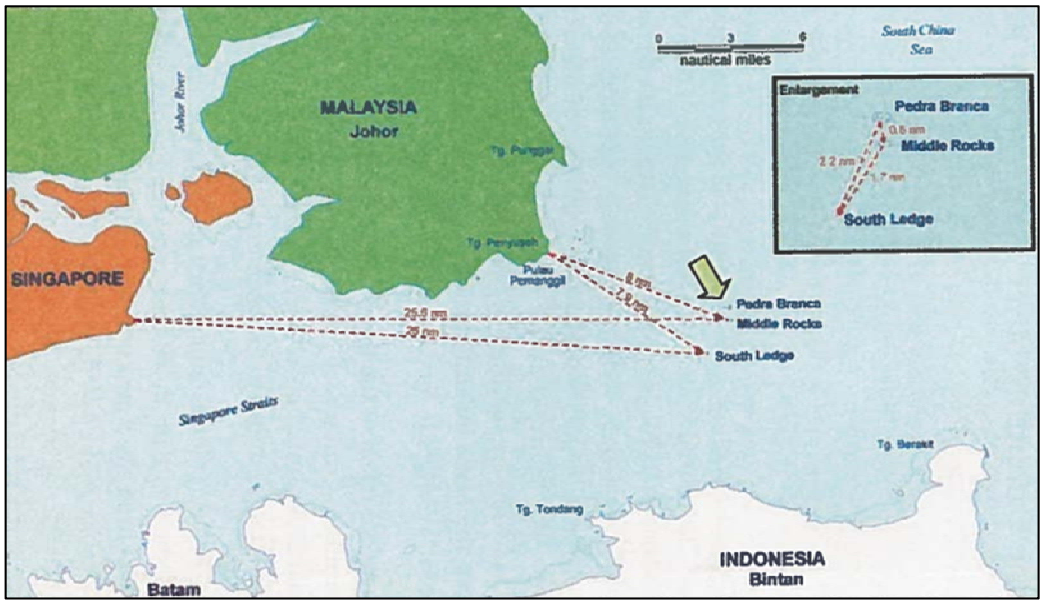
190 Peter Malanczuk and Michael Barton Akehurst, *Akehurst's Modern Introduction to International Law*, 7th rev. ed (London ; New York: Routledge, 1997), 147–50.

191 "Memorial of Malaysia," 6.

192 Ibid., 40–1.

Sultanate. The next important event happened soon after the Anglo-Dutch treaty, when the British and Johor ruler signed the 1824 Crawfurd Treaty, which also did not change the Pedra Branca status. In this treaty, Temanggong of Johor ceded Singapore and surrounding islets within a 10 nautical mile radius to the English East India Company in exchange for British security assurances. Malaysia argued that this secession did not include Pedra Branca which lay beyond 10 nautical miles from the island. Another supporting argument of Malaysia was the construction of Horsburgh lighthouse by British authorities in 1836. Malaysia contended that the British did ask permission to Johor authority prior conducting the work; this implied the sovereignty of Johor over Pedra Branca.[193] All the claims made by Malaysia relied on its history as Johor's successor, which inherited Johor's territory post-1824. The arguments barely discussed the positive conduct of Malaysia as a sovereign nation over Pedra Branca, which was very important to prove the sovereignty based on international law.

Figure 6. Pedra Branca, Middle Rocks, and South Ledge Locations



Source: Kadir Muhammad, *Malaysia Singapore: Fifty Years of Contentions 1965–2015* (Kuala Lumpur: The Other Press, 2015).

193 Ibid., 59–60.

Singapore, in contrast, argued that Pedra Branca was considered *terra nullius.* Singapore did not question the Crawfurd Treaty. Instead, it insisted that Pedra Branca belonged to no one prior to 1847. Subsequently, the British government owned Pedra Branca, marked by the construction of the Horsburgh Lighthouse from 1847 to 1851.[194] Since then the East India Company, as the representative of British authority, later continued by Singapore, showed continuous conduct exercising sovereignty in Pedra Branca. Singapore also pointed to the conduct of Malaysia related to Pedra Branca to support Singapore's claim. According to Singapore, Malaysia recognized the sovereignty of Singapore over Pedra Branca, which was shown in a letter dated September 21, 1953 from the Johor State Secretary, who wrote: "the Johore Government does not claim ownership of Pedra Branca."[195] In addition, Malaysian officials continuously asked permission from the Singapore authority to get access to visit Pedra Branca on several occasions.[196] Malaysia even depicted Pedra Branca as belonging to Singapore on a number of Malaysian maps prior to 1979.[197] Malaysia later claimed that the depictions were merely technical errors, and thus could not be interpreted as an acknowledgement of sovereignty.[198] These arguments were to support the principle of effective occupation conducted by Singapore to the "no man's land" to be recognized as the sovereign nation.

The ICJ's final judgment accommodated both countries' claims, which confirmed that Pedra Branca was not *terra nullius* and that the conduct of Singapore towards the island demonstrated the act of sovereignty. The Court noted that the Johor Sultanate's territory included all islands and maritime features in the Singapore Strait, including Pedra Branca, thus the island was not *terra nullius*. The Court also agreed that the relations between Johon and the *orang laut* affirmed the sovereignty of the sultanate over

194 "Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge: Malaysia/Singapore: Memorial of Singapore," March 25, 2004, 41, http://www.icj-cij.org/docket/files/130/14133.pdf.

195 M. Seth Bin Saaid, September 21, 1953, http://www.mfa.gov.sg/content/dam/mfa/images/media_center/special_events/pedra_branca/Letterof19530921%28SingaporeMemorial%29.jpg.

196 "Memorial of Singapore," 151–2.

197 Ibid., 155.

198 Kadir Mohamad, *Malaysia Singapore*, 2015, 109–10.

Pedra Branca. The Court, however, did not reject the originality of the 1953 official letter that explained the position of the sultanate with regard to Pedra Branca at that time, which Johor did not claim to have sovereignty over the island.[199] The appearance of the word "Singapore" on Pedra Branca on the maps published by the Malaysian was perceived as Malaysia's confirmation to Singapore's sovereignty over Pedra Branca.[200] The Court eventually concluded that "by 1980 sovereignty over Pedra Branca/Pulau Batu Puteh had passed to Singapore."[201] This decision itself relied on international law, which states that "[s]overeignty over territory might under certain circumstances pass as a result of the failure of the State which has sovereignty to respond to conduct *à titre de souverain* of the other State or to concrete manifestations of the display of territorial sovereignty by other State."[202] It was not clear that the ICJ marked 1980 as the year when the sovereignty over the island was passed from Malaysia to Singapore because no major event happened in that year except the protest of Singapore against Malaysia's 1979 map. The disputing parties failed to provide evidence, making it difficult for the court to track the exact date of the passing of sovereignty.

C. OTHER CASES: SIPADAN-LIGITAN AND SINGAPORE RECLAMATION

This section will discuss other maritime disputes in Southeast Asia that were concluded by the international arbitrations, which were featured by different characteristics of the variables than in the Pedra Branca dispute. The two cases are the Sipgadan-Ligitan disputes between Indonesia and Malaysia and the Singapore reclamation works between Malaysia and Singapore. In the conflict over Sipadan and Ligitan, Malaysia and Indonesia disputed the sovereignty of the islands that lie in resource-abundant seas; whereas, the Singapore reclamation case gives an example that the dispute in resource-rich areas with no sovereignty issue could also be brought to the ICJ.

---

199 International Court of Justice, "Summary of the Judgement," 10.

200 Ibid., 11.

201 Ibid.

202 Ibid., 7.

1. Sipadan-Ligitan Case

The dispute between Indonesia and Malaysia over Sipadan and Ligitan Islands was longstanding. It emerged in 1969 and concluded in 2003 by the ICJ. Sipadan and Ligitan are only two tiny islets situated east of Sebatik Island, an island which is shared by Indonesia and Malaysia by the 4°10' latitude as per agreement between the Dutch and the British in the 1891 Treaty. The two islands sit on areas that are believed to have abundant gas and oil reserves of at least approximately "764 million barrels of oil and 1.4 trillion cubic feet of gas."[203] In the middle of the talks, the two parties were aware of the presence of potential sovereignty issues over Sipadan and Ligitan Islands, which led them to halt the discussion over the maritime boundaries until the dispute had been settled.[204] Ten years later, the publication of the New Malaysian Map attracted international attention, as it depicted the two islands as falling within Malaysian sovereignty. Indonesia claimed that the two islands belonged to it since they were situated south of the 4°10' parallel per the 1891 Treaty. The Indonesian government reacted by protesting the map publication and initiated high-level discussion with Malaysian officials, including the Prime Minister. The meeting between President Soeharto and Prime Minister Hussein Onn in 1980 as well as with the Malaysian foreign minister in 1982 did not achieve concrete resolution, but instead a commitment to solve the dispute peacefully.[205] The Malaysia-Indonesia relations heated up in the subsequent years following unconducive actions conducted by each party. To calm the situation, Soeharto and Mahathir met in the "four-eyes" discussion to agree upon the attitude of keeping the dispute bilateral rather than involving any international organization.[206] Up to this point, Indonesia and Malaysia committed to use the ASEAN way approach by promoting quiet diplomacy.

---

203 "Indonesia Submarine Capabilities," *NTI: Nuclear Threat Initiative*, August 2, 2013, http://www.nti.org/analysis/articles/indonesia-submarine-capabilities/.

204 John G. Butcher, "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 35, no. 2 (2013): 238.

205 Ibid., 239.

206 Kalimullah Hassan, "KL Upbeat on Boosting Ties with Indonesia," *The Straits Times*, July 19, 1993, http://www.lexisnexis.com.libproxy.nps.edu/lnacui2api/api/version1/getDocCui?lni=3SJD-RG70-0058-X4NB&csi=144965&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true.

The course of the dispute changed in 1994 when Malaysian officials first introduced the possibility of bringing the dispute over Sipadan and Ligitan to international arbitration. Kuala Lumpur believed this method would bring the best outcome in its favor. Mahathir Muhammad, who previously opposed dispute internationalization, eventually shared the same view that "the ICJ offered the best solution."[207] This idea was initially rejected by Jakarta, which maintained the stance to settle the dispute through bilateral negotiations. Even if the negotiations failed to reach such agreement, the Soeharto administration would choose a third-party mechanism through the ASEAN High Council rather than the ICJ.[208] The ASEAN High Council is a body mandated by the TAC to settle unresolved disputes between the TAC signatories; its members include a minister from each ASEAN country, including those in dispute.[209] The High Council could "recommend to the parties in dispute appropriate means of settlement . . . [and] appropriate measures for the prevention of a deterioration of the dispute."[210] On the other hand, it lacked a binding power to force the disputing parties to obey its decisions. Malaysia refused this idea because it realized that the High Council, which was represented by ministers from every ASEAN member, would support Indonesia, since most of them also disputed Malaysia's unilateral claim following the 1979 New Map publication.[211] Having the different dispute resolution preference, both countries continued their negotiations intensely until a serious meeting in mid-1996 produced joint-recommendation for both governments.[212] The recommendation was to bring the dispute to the ICJ. Both countries' leaders finally agreed upon bringing the

---

207 Butcher, "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea," 242.

208 Paul Jacob, "Isles Row: Jakarta to Study Mediation Proposal," *The Straits Times*, September 9, 1994, http://www.lexisnexis.com.libproxy.nps.edu/lnacui2api/api/version1/getDocCui?lni=3SJD-PT90-0058-X25F&csi=144965&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true.

209 "Treaty of Amity and Cooperation," 5.

210 Ibid.

211 "Kesepakatan Soeharto-Mahathir Bawa Sipadan-Ligitan ke Mahkamah Internasional [Soeharto-Mahathir Agreement to Bring Sipadan-Ligitan to the ICJ]," *Kompas Online*, October 8, 1996, http://www.library.ohiou.edu/indopubs/1996/10/07/0036.html.

212 Ibid.

dispute to the ICJ as recommended. The Court itself awarded the islands to Malaysia based on the principle of *effectivités*.

Unlike the Pedra Branca dispute, the contention between Indonesia and Malaysia was over island sovereignty situated in resource-rich areas, which is usually difficult to resolve peacefully. The fact that both countries managed to solve the conflict peacefully, although through the international arbitration, left an interesting discussion. The reasons behind the decision to bring this dispute to the ICJ were not clear, especially for Indonesia's side that always rejected internationalization of the dispute since the beginning. One possible reason that drove President Soeharto to accept Malaysia's proposal was the urgency in promoting regional stability in order to maintain Indonesia's economic development.[213] The period when the dispute arose was a difficult period for the Southeast Asian economy, including Indonesia. Facing economic recession, Soeharto needed to have good relations with every country, including Malaysia, to boost the Indonesian economy. The conflict between the two countries over sovereignty evidently did not end smoothly post-ICJ decision. Indonesia and Malaysia were involved in several naval clashes years later which, despite their small scale, degraded the two countries' relations once again. It was a dispute over the Ambalat blocks, waters around the Sipadan Ligitan Islands, believed to contain a huge amount of oil and gas deposits. This dispute happened because the ICJ did not conclude the maritime borders right after the decision of Sipadan and Ligitan.[214] This case shows that the presence of disputed islands in resource-rich areas has the potential to cause contention, although it had been solved in relatively peaceful ways.

2. Dispute over Singapore Reclamation Works

The dispute emerged in 2002, when Malaysia protested Singapore reclamation projects. In that period, Singapore was currently developing Tuas View Extension, an area planned to be Singapore's future major port. The Malaysian government accused the

[213] Butcher, "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea," 244.

[214] Ibid., 248–9.

Singapore reclamation in Tuas of encroaching into Malaysian territorial waters. Malaysia claimed that the reclamation works infringed with Malaysia's "Point 20." Point 20 is one of the points off the coast of Tuas that was claimed by Malaysia to be its own. Malaysia asserted a portion of waters enclosed by points 19, 20, and 21 as its territorial waters (see Figure 7). This claim was, again, based on the Malaysia's controversial 1979 map published by the Malaysian government showing Malaysia's maritime boundaries. Malaysia's protest on Point 20 was only the beginning of the story.

The scope of the dispute widened when Malaysia protested the reclamation work in Tekong Island and Ubin Island as an environmental issue. Malaysia alleged that the reclamation works in the areas caused environmental degradation that could negatively impact marine ecosystem and affect the livelihood of Malaysian fishermen.[215] The Johor people also worried that the reclamation would shallow the Johor River so that the river "could not sustain enough marine life."[216] A Johor official further said that the extension of Tekong Island would narrow the shipping channel towards Malaysia's Pasir Gudang Port, thus would dissuade ships from visiting the port.[217] These protests heated the relations of both countries, which eventually brought the issue up to third-party settlement. In this case, Kuala Lumpur was the initiator that brought the dispute to the ITLOS.

Malaysia brought the dispute to the ITLOS by filing the provisional measures on September 5, 2003. The involvement of the ITLOS marked a new episode of the land reclamation dispute. The arbitration process consisted of three phases: the written pleadings, the oral proceedings, and the judgment. In the written pleading, Malaysia based its legal claim on territorial and environmental problems. In the written response, Singapore argued that Malaysia failed to prove the negative impact of the reclamation to

---

215 Koon Hean Cheong, *Malaysia & Singapore: The Land Reclamation Case: From Dispute to Settlement* (Singapore: Straits Times Press Pte Ltd, 2013), 26.

216 "Sedimentation Threat to Farmers, Fishermen," *New Straits Times (Malaysia)*, September 16, 2002, http://www.lexisnexis.com.libproxy.nps.edu/lnacui2api/api/version1/getDocCui?lni=46SC-X610-00K1-R2F4&csi=270944,270077,11059,8411&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true.

217 Kog Yue-Choong, "Environmental Management and Conflict in Southeast Asia–Land Reclamation and Its Political Impact," Working Paper (Institute of Defence and Strategic Studies Singapore, 2006), 10, http://www3.ntu.edu.sg/rsis/publications/WorkingPapers/WP101.pdf.

the marine environment or the violation to Malaysian sovereignty.[218] On October 8, 2003, the ITLOS issued an order considering the preceding written pleads and oral hearings. The tribunal did not order Singapore to stop its reclamation, instead ordering both countries to cooperate in resolving the problem. The tribunal also mandated "Singapore not to conduct its land reclamation in ways that might cause irreparable prejudice to the rights of Malaysia or serious harm to the marine environment."[219] This decision concluded the 20-month dispute.

This dispute had different characteristics than Pedra Branca case. Malaysia and Singapore did not dispute island sovereignty, instead they established maritime boundaries. On the other hand, the area disputed contained major economic values. The two countries disputed sea access to the future major ports, which is very important for the Malaysian and Singaporean economies. The location of Singapore's future container ports was just off the Port of Tanjung Pelepas (PTP), Malaysia's largest container port, which was launched on March 2000, a year prior to Singapore's building on Tuas. The Malaysian Government had designed the PTP to be a serious rival to Singapore's ports, with a capacity of 2 million TEU (twenty-foot equivalent unit) a year. The Singapore ports have currently dominated the port business in the region with a capacity of 17 million TEU a year in 2000.[220] Meanwhile, the Singapore government plans Tuas to be, in the future, Singapore's largest container port with a capacity of 65 million TEU in 2025.[221] Malaysia worried its container port would be challenged by Singapore's new port, and that the reclamation works would shallow the deep-water access to the PTP. The fact that they sought the ITLOS to resolve the dispute is interesting to analyze. Malaysia was probably motivated by winning in Sipadan Ligatan case against Indonesia in 2002; this option was proposed to a country that always prefers international legal

218 Cheong, *Malaysia & Singapore*, 46–7.

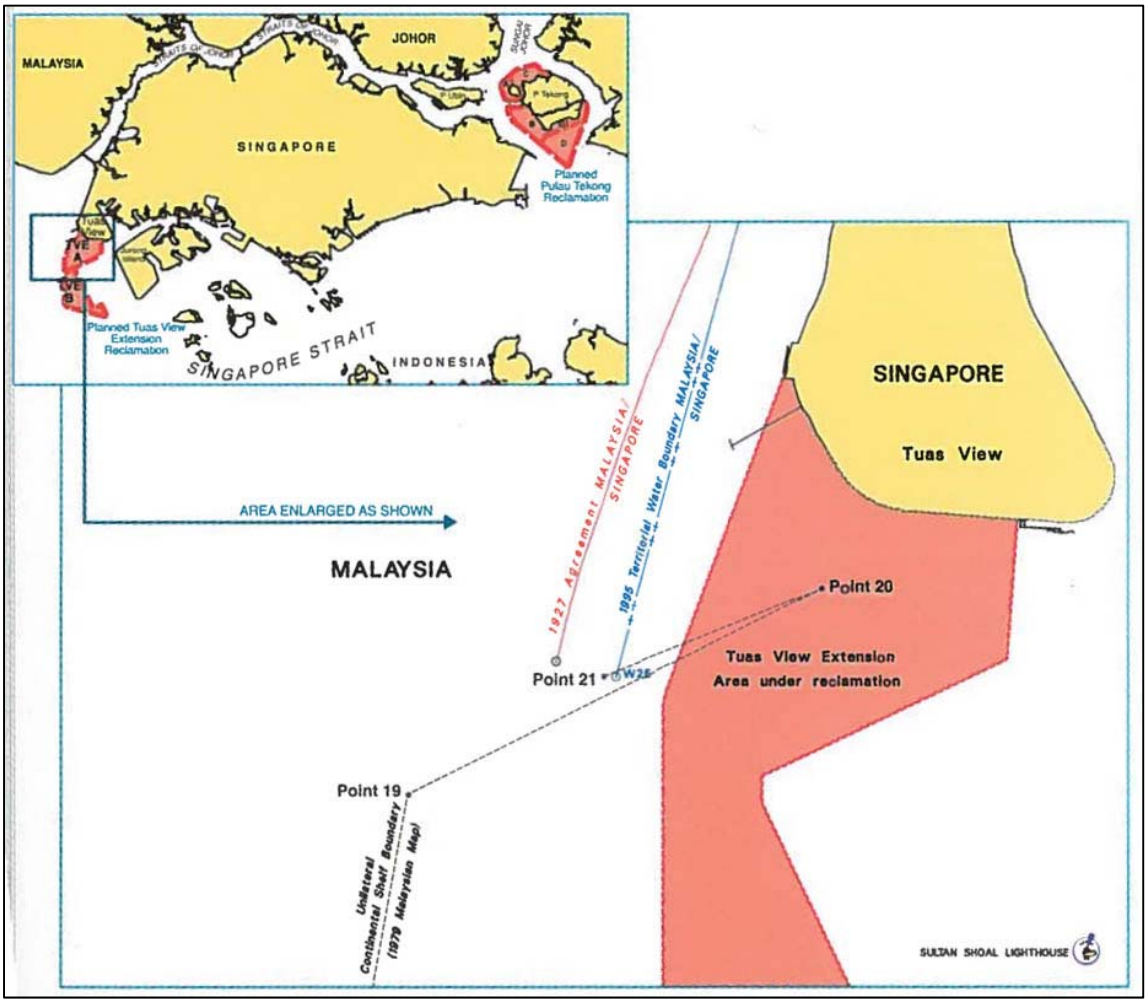
219 *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore): Provisional Measures: Order* (Hamburg, 2003), https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_12/Order.08.10.03.E.pdf.

220 "Container Port Traffic (TEU: 20 Foot Equivalent Units)," *The World Bank*, accessed September 2, 2015, http://data.worldbank.org/indicator/IS.SHP.GOOD.TU/countries?page=2.

221 "Singapore Plans Megaport at Tuas to Nearly Double Box Capacity in 10 Years," accessed September 2, 2015, http://www.infinitycargo.com/index.php/en/careers/104-news-and-events/news/523-singapore-plans-megaport-at-tuas-to-nearly-double-box-capacity-in-10-years.

judgment like Singapore. Like other cases, the two countries had discussed the dispute bilaterally before submitting to the ITLOS. The fact that arbitration through the ITLOS was chosen rather than military force, when negotiations stalemated, shows that both countries committed to a peaceful dispute resolution between Singapore and Malaysia.

Figure 7. Point 20 in Tuas Reclamation Area



Source: Cheong Koon Hean, *Malaysia and Singapore: The Reclamation Case: From Dispute to Settlement* (Singapore: Straits Times Press Pte Ltd, 2013).

D. SUMMARY

Some countries brought their unresolved disputes to third-party settlements as an alternative for peaceful dispute resolutions because they perceive international arbitrations as fair mechanisms to solve the disputes and have legal power to force the

parties to obey whatever decisions had been made by the arbitrations. In Southeast Asia, there had been a tendency to use such mechanisms to solve maritime disputes. This can be seen in five cases related to maritime disputes submitted to various types of international arbitrations by ASEAN members since the 1990s. Indonesia and Malaysia were the first to bring a dispute over Sipadan and Ligitan Islands to the ICJ in 1998 followed by Pedra Branca and reclamation work disputes of Singapore and Malaysia to the ICJ and the ITLOS in 2003. Myanmar concluded its maritime borders with Bangladesh through the ITLOS in 2012, marked as the first maritime delimitation in Southeast Asia made through the third-party mechanism. The last case was the Philippines, which submitted its dispute against China over sovereignty in the South China Sea. This trend shows that third-party settlement through international arbitrations could be a useful means for peaceful dispute resolutions; at the same time, embracing external bodies is an indicator that ASEAN lacks an internal settlement mechanism.

Unlike maritime delimitation and joint-development resolutions, analysis over Pedra Branca, Sipadan-Ligitan, and Singapore reclamation disputes show no common patterns underlying ASEAN countries to seek external third-party mechanisms to resolve their maritime disputes. In the Pedra Branca case, the absence of significant economic values in the disputed areas and the presence of disputed island sovereignty led Singapore and Malaysia to bring the dispute to the ICJ. This seems to be the strongest case for countries to seek international arbitrations. The disputed island sovereignty causes the bilateral negotiations to fail, while the absence of natural resources reduces the importance of the dispute compared to the other factors. The Sipadan Ligitan Islands dispute between Indonesia and Malaysia was over island sovereignty in resource-rich areas. Both countries agreed to bring the dispute to the ICJ mainly for political considerations, especially for Indonesia. Indonesia's leader focused more on economic recovery following the financial crisis in 1998, believing that the prolonged dispute with Malaysia would not benefit Indonesian economy. The tensions remained high in the following years as a consequence of undelimited maritime boundaries. The dispute over Singapore reclamation works between Malaysia and Singapore had strong economic motives rather than sovereignty issues. This case shows that Malaysia and Singapore

favor international arbitrations to solve their disputes when bilateral efforts fail to conclude agreements. The three case studies show that various conditions could motivate ASEAN countries to bring disputes to third-party settlement if the bilateral negotiations ended in deadlocks. In a case where diplomatic negotiations were unsuccessful, international arbitrations could become one of the options available to resolve the conflicts. This mechanism is more preferable by Southeast Asian countries than the internal third-party mechanism like the High Council because international arbitrations offer legal certainty that obliged the parties to accept the decision.

THIS PAGE INTENTIONALLY LEFT BLANK

V. MILITARIZED DISPUTES

Despite its broad recognition as a relatively peaceful region, some serious disputes that escalated into military skirmishes sometimes involved Southeast Asian countries. Most of those disputes were about sovereignty. The adoption of the *uti possidetis juris* principle as former Western colonies did not automatically free Southeast Asian countries from sovereignty disputes among them, in land and even at sea. Most of the disputes, including border disputes, were fortunately resolved peacefully, such as bilateral agreements, third-party settlement, and provisional arrangements. These three dispute settlements are peaceful approaches adopted by Southeast Asian countries, particularly ASEAN members, as mandated by the ASEAN Charter and the TAC. However, some instances of small-scale military frictions could not be avoided even though all members of ASEAN are bound by the commitment to settle the disputes peacefully.[222] The 2008 clash between the Cambodian and Thai armies over disputed borders around the Preah Vihear Temple, that resulted in victims on both sides, was the most recent example to illustrate that such incidents in Southeast Asia are sometimes unavoidable. At sea, the occurrence of violent maritime disputes is more prevalent since the tension in the South China Sea remains high.

The experience of having such militarized disputes should be taken into account in anticipating Southeast Asia's current and future disputes. It is important then to know what factors led Southeast Asian countries to abandon their pledges to avoid a military approach in every conflict, especially in the maritime realm. To answer, this chapter will discuss the militarized maritime disputes in the region and analyze the South China Sea conflicts as a case study. The analysis concludes that maritime disputes that led into military tensions were likely in resource-rich areas with sovereignty disputes over islands or maritime features. This is because the issue of sovereignty is always sensitive for sovereign nations, including Southeast Asian states; in addition, the prospect of gaining

222 "Treaty of Amity and Cooperation," article 13.

economic value from potential hydrocarbon reserves in the disputed areas increased the sensitivity of the disputes that prevented them from compromise.

A. MILITARIZED MARITIME DISPUTES IN SOUTHEAST ASIA

Several maritime disputes that involved military forces have occurred in Southeast Asian waters since the 1960s. Longstanding border conflicts between Cambodia and Thailand impacted their relations in the maritime areas. Not long after the ICJ decision to award Preah Vihear to Cambodia in 1962, both countries claimed the sovereignty of Koh Kut Island. In 1965, at the height of the dispute, Thailand's warning to Cambodia not to approach Koh Kut resulted in a small-scale naval clash.[223] No further engagement had been reported even though the sovereignty of Koh Kut remained with Thailand. Another militarized dispute involving Southeast Asian countries happened in 1986, when Singapore enforced a naval blockade in the disputed Pedra Branca to prevent any approach by Malaysia to the island, including the fishermen.[224] Another standoff between the two navies took place in April 1992 when two patrol boats from each country engaged each other near Pedra Branca.[225]. Both governments finally agreed to bring the dispute to the ICJ instead of defending each claim to the islands through military confrontation.

Ambalat is another flashpoint in Southeast Asia. Ambalat, a portion of waters in the Sulawesi Sea that is believed to be rich in natural resources, is disputed by Indonesia and Malaysia. This was the continuation of the dispute over Sipadan and Ligitan Islands that was resolved through the ICJ due to undelimited maritime boundaries following the ICJ decision. In 2005, both navies' patrol boats bumped each other while patrolling in the disputed area. That incident left no serious casualties but heated up the relations between the two neighbors. The conflict emerged following concessions granted by Malaysia to Royal Dutch Shell and Petronas to explore the area, the same zone in which the

223 Chambers and Wolf, "Image-Formation at a Nation's Edge," 12–3.

224 Kadir Mohamad, *Malaysia Singapore*, 111.

225 Yoram Z. Haftel, *Regional Economic Institutions and Conflict Mitigation: Design, Implementation, and the Promise of Peace*, Michigan Studies in International Political Economy (Ann Arbor: University of Michigan Press, 2012), 159.

Indonesian government gave similar rights to UNOCAL.[226] The issues reemerged in 2008-09 as Indonesia blamed Malaysia for continuous territorial violations even though it did not result in open confrontation as before. However, the issue sparked a broader national sentiment on Indonesia's side as the public preferred the use of military force and called for the spirit of *Ganyang Malaysia* (Crush Malaysia) against Malaysia as in the 1960s. The Ambalat issue worsened the relations of both neighbors which were already degraded due to the issues of "the treatment of Indonesian workers in Malaysia and the alleged 'theft' by Malaysians of Indonesia's cultural heritage."[227] The conflicts only abated after both governments decided to handle them through bilateral discussions.

The South China Sea is probably the most troubled waters in Southeast Asia and has been in the headlines since the 1990s. Six countries claim maritime zones in the sea, which is believed to contain a significant number of hydrocarbon deposits. The disputes have been militarized by each of the claimants, except for Brunei. The presence of China poses the greatest challenge for the disputes to be resolved. Nevertheless, militarized disputes between ASEAN members were also common in the South China Sea dispute. The next section will discuss all military confrontations in the South China Sea in detail.

Table 6 lists all militarized maritime disputes in Southeast Asia since the 1960s. The events included in the table are only the incidents that were related to maritime disputes, such as disputes over maritime boundaries, island sovereignty, and other disputes that occurred at sea. It excludes the conflict between Indonesia and Malaysia during the *Konfrontasi* period in 1965 and the dispute between Malaysia and the Philippines in the 1968 Corregidor Affair. Despite large-scale naval mobilizations, both conflicts were broader than just maritime conflicts. In addition, the table includes militarized disputes between military, law enforcement agency, and civilians, like fishermen.

---

226 Simon Roughneen, "Naval Standoff Between Indonesia, Malaysia," *World Politics Review*, June 12, 2009, http://www.worldpoliticsreview.com/articles/3910/naval-standoff-between-indonesia-malaysia.

227 Butcher, "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea," 250.

Table 6. Summary of Militarized Disputes in Southeast Asian Waters

No	Disputing Countries	Date	Incident	Location
1.	Thailand, Cambodia	1965	Naval clash between both navies	Gulf of Thailand
2.	China, Vietnam	January 19, 1974	The Battle of Paracel. China took over the Crescent Group of the Paracel Islands from Vietnam. Open fires between the two navies.	South China Sea
3.	Malaysia, Philippines	November 1979	Malaysian naval task force occupied Mischief Reef.	South China Sea
4.	Malaysia, Philippines	June 1980	A Philippine navy ship shot at a Malaysian fishing boat from Sabah.	South China Sea
5.	Malaysia, Singapore	1986	Singapore navy ships blockade access to disputed Pedra Branca.	Singapore Strait
6.	China, Vietnam	1988	The Johnson Reef incident. Chinese navy ship sank Vietnamese ship transporting Vietnamese landing troops. Dozen Vietnamese dead.	South China Sea
7.	Malaysia, Philippines	May – August 1988	Malaysian force seized 49 Filipino fishermen in the near Commodore Reef. Both sides increased military presence in the area.	South China Sea
8.	China, Vietnam	March 19, 1992	Small engagement between both troops after China's landing in Da Lac Reef	South China Sea
9.	Malaysia, Singapore	April 1992	A Singaporean patrol boat engaged a Malaysian patrol boat around Pedra Branca.	South China Sea
10.	China, Vietnam	July – August 1992	China official detained several Vietnamese cargo ships accused for	South China Sea

No	Disputing Countries	Date	Incident	Location
			smuggling activities. Warning shot had fired.	
11.	China, Vietnam	July 1994	Two Chinese warships were deployed to blockade a Vietnamese oil rig.	South China Sea
12.	Thailand, Vietnam	May 30, 1995	Exchange of fire between naval ships.	Gulf of Thailand
13.	Malaysia, China	March 16, 1995	Malaysia patrol boats shot at a Chinese trawler fishing at Malaysian EEZ.	South China Sea
14.	Philippines, China	March 25, 1995	Philippine military destroyed structures built by China in disputed areas off Palawan.	South China Sea
15.	Vietnam, Taiwan	March 25, 1995	Taiwanese Navy fired at a Vietnamese freighter that approached a Taiwan-held island in the Spratly.	South China Sea
16.	Philippines, China	January 26, 1996	Philippine Navy exchanged fires with Chinese vessels near Capones Island.	South China Sea
17.	Philippines, China	April 1997	China and the Philippines competed for Scarborough Shoal.	South China Sea
18.	Philippines, China	January 1998	22 Chinese fishermen were arrested by the Philippine Navy accused of illegal fishing off Scarborough Shoal.	South China Sea
19.	Vietnam, Philippines	January 1998	Vietnam soldiers fired at a Philippine fishing boat, injured one fisherman.	South China Sea
20.	Myanmar, Thailand	December 1998	A Burmese vessel attacked a Thai naval ship killing two Thai soldiers.	Andaman Sea
21.	Myanmar, Thailand	January 1999	Exchange of fires between the two navies.	Andaman Sea

No	Disputing Countries	Date	Incident	Location
			Three Burmese sailors dead.	
22.	Philippines, China	May 1, 1999	Chinese naval ships intimidated a grounded Philippine navy ship.	South China Sea
23.	Philippines, China	May 23, 1999	A Philippine navy ship collided with a Chinese fishing boat, sinking the fishing boat.	South China Sea
24.	Philippines, China	June 19, 1999	Another collision between a Philippine navy ship and a Chinese fishing boat, which sank the fishing boat.	South China Sea
25.	Philippines, Vietnam	October 13, 1999	Vietnamese troops shot at Philippine air force plane in the Spratly Islands	South China Sea
26.	Malaysia, Philippines	October 1999	Malaysian jet fighters and Philippine surveillance planes nearly engaged over Malaysian-occupied reef in the Spratly.	South China Sea
27.	Philippines, China	May 26, 2000	Philippine officials fired at Chinese fishermen resulting in 1 dead. Another seven were detained.	South China Sea
28.	Philippines, China	January – March 2001	Philippine navy officers boarded 14 Chinese fishing vessels, confiscated their catches, and repelled them from disputed seas.	South China Sea
29.	Philippines, Vietnam	August 2002	Vietnamese soldiers fired warning shots at a Philippine plane.	South China Sea
30.	Brunei, Malaysia	March 2003	Brunei sent a navy gunboat to prevent Malaysia's drilling ship from approaching the oil field location. Malaysia retaliated by sending patrol boats to block	South China Sea

No	Disputing Countries	Date	Incident	Location
			Brunei's company in the same area.	
31.	Indonesia, Malaysia	April 2005	Two patrol boats bumped each other in Ambalat	Ambalat
32.	Indonesia, Malaysia	2008 – 2009	Naval standoff in Ambalat	Ambalat
33.	Indonesia, China	May – July 2010	Indonesian naval ships seized armed Chinese fishing vessels.	South China Sea
34.	Indonesia, China	June 23, 2010	Indonesian patrol boats confronted a group of Chinese fishing vessels that were escorted by armed Chinese fishing management vessels.	South China Sea
35.	Philippines, China	February 25, 2011	A Chinese frigate shot a warning at Filipino fishermen near Jackson Atoll.	South China Sea
36.	Vietnam, China	May – June, 2011	China cut Vietnamese exploration cables (2 incidents).	South China Sea
37.	Philippines, China	March 2011	China cut Philippine exploration project.	South China Sea
38.	Vietnam, China	July 5, 2011	Chinese soldiers ousted Vietnamese fishermen near the Paracel Islands.	South China Sea
39.	Philippines, China	October 18, 2011	Philippine navy rammed Chinese fishing boat near Reed Bank.	South China Sea
40.	Vietnam, China	March 23, 2012	China detained 21 Vietnamese fishermen near the Paracel Islands.	South China Sea
41.	Philippines, China	April 10, 2012	Both countries engaged in naval standoff at Scarborough Shoal.	South China Sea

Adapted from: Yoram Z. Haftel, *Regional Economic Institutions and Conflict Mitigation: Design, Implementation, and the Promise of Peace*, Michigan Studies in International Political Economy (Ann Arbor: University of Michigan Press, 2012), 159 and "Timeline: 1955-Present," *Center for New American Security*, accessed February 7, 2016, http://www.cnas.org/flashpoints/timeline.

B. WHAT LED TO SO MANY MILITARIZED INCIDENTS IN SOUTHEAST ASIAN WATERS?

The presence of hydrocarbon resources and the disputed island sovereignty seem to be the strongest reasons for Southeast Asian countries to take military actions. Table 6 identifies at least five hotspots in Southeast Asian waters, namely the Andaman Sea, the Singapore Strait, the Gulf of Thailand, the Sulawesi Sea (Ambalat), and the South China Sea. Among them, the South China Sea is the area with the most frequent conflicts, with at least 34 incidents at various levels, from mere provocation to open fire. The South China Sea is well known for its abundant oil and natural gas resources, as well as fisheries. A report by the U.S. Energy Information Administration (EIA) predicts the area "holds approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas."[228] Those numbers were only rough estimations since the disputes in the area prevented optimal explorations. In number of fisheries, the South China Sea is the third world's largest marine producer among 19 fishing zones.[229] Another attribute contributing to the South China Sea's status as one of the world's most contentious seas is the contested maritime features. Hundreds of islets, reefs, and corals in the Paracel and the Spratly are subject to overlapping claims. None of them has clear sovereignty status.

The other area similar to the South China Sea is Ambalat and the Gulf of Thailand. Located in the Sulawesi Sea off Borneo, Ambalat is also known for its potential natural resource deposits. A study estimates that Ambalat contains potential oil reserves of up to 1 million barrels and 12.5 trillion cubic feet of gas.[230] Ambalat had also been a

228 "South China Sea," *US Energy Information Administration*, February 7, 2013, https://www.eia.gov/beta/international/regions-topics.cfm?RegionTopicID=SCS.

229 FAO Fisheries and Aquaculture Dept and Food and Agriculture Organization of the United Nations, eds., *Review of the State of World Marine Fishery Resources*, FAO Fisheries and Aquaculture Technical Paper 569 (Rome, Italy: Food and Agriculture Organization of the United Nations, 2011), 5–6, http://www.fao.org/docrep/015/i2389e/i2389e.pdf.

230 Eddy Purwanto, "Minister Marty, Ambalat Should Never Be Forgotten," *The Jakarta Post*, November 19, 2012, http://www.thejakartapost.com/news/2012/11/19/minister-marty-ambalat-should-never-be-forgotten.html.

source of contention between Malaysia and Indonesia in the past, especially after the ICJ's decision to award Sipadan and Ligitan, islands located in the area, to Malaysia. The settlement of the disputed islands shifted the conflict from the islands to the sea as the court left the maritime boundaries unresolved. The same situation applied to the conflict between Thailand and Cambodia in the Gulf of Thailand, where military skirmishes between them occurred around a hydrocarbon reserves area with a sovereignty dispute over Koh Kut Islands. At the height of the dispute, Cambodia challenged the legality of Koh Kut Island being used as a basepoint by Thailand to generate maritime zones. Koh Kut lays in the vicinity of the Thai Basin, an area that was believed abundant in oil and natural gas.[231]

Other contentious seas, the Singapore Strait and the Andaman Sea, have slightly different characteristics than the previous ones. Malaysia and Singapore disputed sovereignty of small islands in the eastern entrance of the Singapore Strait, Pedra Branca, Middle Rocks, and South Ledge.[232] Despite its lack of resources, the Singapore Strait is one the most strategic choke points in the world. The ownership of Pedra Branca and the islands surrounding it would add strategic and economic value to a country, since it would control the busiest strait in the world that connects directly to the South China Sea. The conflict between Myanmar and Thailand in the Andaman Sea took place in a resource-rich area without sovereignty disputes. This case may be the only exception to the generalization that militarized conflicts most commonly arose in areas that have abundant resources and complex sovereignty disputes. In fact, the incidents in the Singapore Strait and the Andaman Sea did not occur as often as in the South China Sea, as countries are likely to accept consensus in areas that do not meet the two criteria: abundant natural resources and disputed islands sovereignty.

[231] See Chapter 3 for detail.

[232] See Chapter 4 for detail.

C. CASE STUDY: SOUTH CHINA SEA DISPUTES

1. The Big Picture of the South China Sea

The South China Sea is a continuation of the Pacific Ocean that is located in the east of the Asian mainland. It encompasses the sea from the Strait of Malacca on the south to the Strait of Taiwan on the north with an estimated area of 1,423,000 square miles.[233] Seven Asian countries have borders on the South China Sea: China, Taiwan, Vietnam, the Philippines, Malaysia, Brunei, and Indonesia. The South China Sea hosts numerous maritime features that are grouped into seven separated locations: the Pratas Islands, the Paracel Islands, the Macclesfield Bank, the Scarborough Shoal, the Spratly Islands, the Natuna Islands, and the Anambas Islands. All South China Sea coastal states have overlapping claims over maritime zones, with six of them, except Indonesia, also claiming sovereignty over maritime features in the areas. The overlapping claims attract the world's concern, especially with the engagement of China in the conflicts.

The Paracel and Spratly Islands are the most contentious areas due to overlapping claims made by six countries. The Paracel Islands is located on the north part of the South China Sea. An estimate of 130 small coral islands and reefs spread to two smaller groups: the Amphitrite Group on the northeast and the Crescent Group on the southwest.[234] The whole features in Paracel are now under China's control. Initially, China only occupied the Amphitrite Group since 1946 when it sent two ships to land on Woody Island.[235] The other group, the Crescent, was controlled by the French and passed down to South Vietnam following its independence.[236] China took over the Crescent Group after defeating the Vietnamese in the bloody incident known as the Battle of the

233 Eugene C. LaFond, "South China Sea," *Encyclopedia Britannica*, accessed February 5, 2016, http://www.britannica.com/place/South-China-Sea.

234 "Paracel Islands," *The CIA World Factbook*, accessed February 5, 2016, https://www.cia.gov/library/publications/resources/the-world-factbook/geos/pf.html.

235 Marwyn S. Samuels, *Contest for the South China Sea* (New York: Methuen, 1982), 76.

236 Ibid.

Paracel Islands in 1974.[237] The islands are still contested by Vietnam and Taiwan albeit they are *de facto* under China's control.

The Spratly Islands lie in the southern part of the South China Sea. Prescott and Schofield suggest that the islands contain twenty-six islands or atolls and seven groups of rocks that are visible during high tide.[238] Other scholars state that more than 140 features spread in the Spratly Islands occupied areas of more than 140,000 square kilometers.[239] All of them are small. The largest is the Itu Aba Island, which is currently occupied by Vietnam, with a dimension of 1.4 kilometers long and 400 meters wide.[240] Among the 140 features, 44 of them are controlled by several states, with Vietnam controlling 25, the Philippines controlling eight, seven by China, three by Malaysia, and Taiwan occupies one.[241] Brunei implicitly claims the ownership of Louisa Reef that lies within Brunei's claimed EEZ even though it does not control it. These countries also claim that the continental shelf and EEZ overlap, which complicates the dispute.

2. Sovereignty Claims

The basis of the claim differs for each state. Some base their claim from a historical perspective; others use international law. These unilateral claims resulted in the overlapping claims over continental shelf and EEZ as well as sovereignty over maritime features that spread across the South China Sea. Two factors underlie the overlapping

---

237 Veeramalla Anjaiah, "Paracel Islands Dispute Still Lingers on after 40 Years," *The Jakarta Post*, January 19, 2014, http://www.thejakartapost.com/news/2014/01/19/paracel-islands-dispute-still-lingers-after-40-years.html%20.

238 Prescott and Schofield, *The Maritime Political Boundaries of the World*, 218.

239 Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea," 145.

240 Victor Prescott and Clive Howard Schofield, *Undelimited Maritime Boundaries of the Asian Rim in the Pacific Ocean*, Maritime Briefing 3, 1 (Durham: IBRU, 2001), 58.

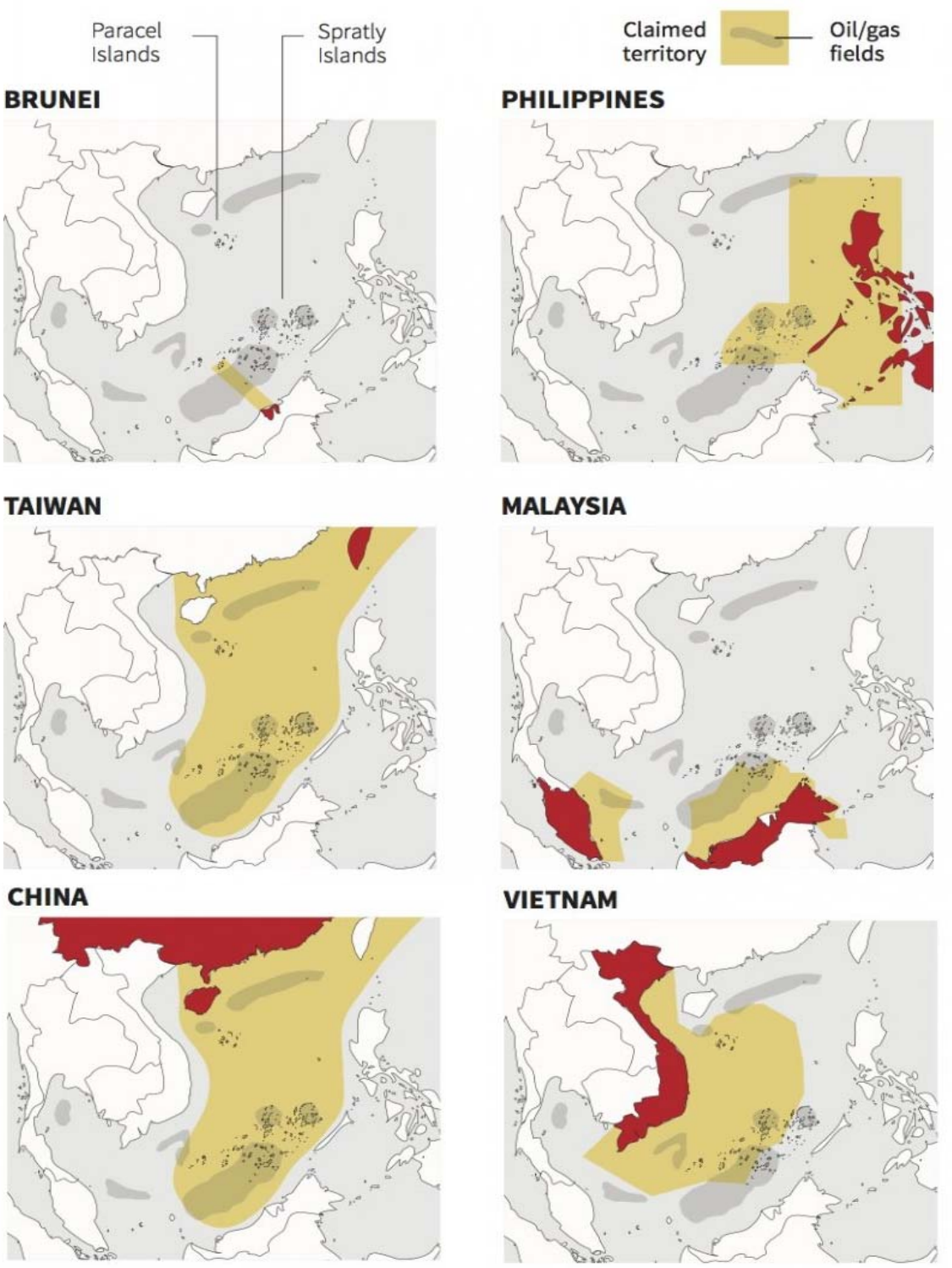
241 Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea," 144.

claims, namely the notion of *terra nullius* and the Law of the Sea resulting from a series of conventions from 1958 to 1982. This section discusses Southeast Asian countries' claims to the South China Sea in alphabetical order: Brunei, Malaysia, the Philippines, and Vietnam. The review also includes some incidents related to the overlapping claims to show the connection over these claims and dispute militarization. Figure 8 depicts the overlapping claims in the South China Sea.

Brunei's claim of maritime zones appeared in three maps it published in 1987-88. The first map was published in 1987 showing its territorial waters. Brunei published the other two in 1988 showing the continental shelf and fishery limits. The continental shelf map presented a rectangular-shaped area drawn from Brunei's coastline northward. This claim was based on an extended 350 nautical miles continental shelf.[242] The area included a submerged rock Louisa Reef that was also claimed by Malaysia. Brunei had never openly claimed sovereignty of Louisa Reef, but merely the surrounding entitled maritime zones.

[242] Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig, *Sharing the Resources of the South China Sea*, vol. 31, Publications on Ocean Development (The Hague: Martinus Nijhoff Publishers, 1997), 38.

Figure 8. Overlapping Claims in the South China Sea



Source: Gus Lubin, "Claims on the South China Sea," *Business Insider*, February 17, 2014, http://www.businessinsider.com/south-china-sea-territory-claims-map-2014-2.

Malaysia based its claim to the continental shelf extension and occupation principles. As a party to the 1958 continental shelf convention, Malaysia issued its own Continental Shelf Act number 83 in 1966 that defined the continental shelf up to "two hundred metres below the surface of the sea."[243] The clear depiction of the continental shelf claim appeared in the 1979 New Map, in which Malaysia claimed that every feature lay within the continental shelf claim. This map provided a legal basis for Malaysia to occupy some islands and features in the South China Sea. Malaysia first occupied Swallow Reef in 1983 by deploying 70 soldiers. Subsequently, Malaysia stationed military personnel in Ardasier Reef, Dallas Reef, and Mariveles Reef from 1986 to 1988.[244] In the uninhabited Louisa and Royal Charlotte Reefs, Malaysia built a navigation light and beacon to assert sovereignty. Kuala Lumpur also claimed Commodore Reef, which was occupied by the Philippines, and two features occupied by Vietnam: Amboyna Cay and Barque Canada Reef.[245] In 1999, Malaysia occupied Investigator Shoal and Erica Reef that was claimed by the Philippines by deploying a task force consisting of six frigates and fighter jets.[246] The relations between Malaysia and the Philippines further heated up when Malaysian fighter jets nearly engaged with two Philippine aircraft.[247]

The first claim effort by the Philippines was when Tomas Cloma, a Filipino businessman, occupied a group of islands west of Palawan in 1956 that were considered as *terra nullius*. Cloma then ceded the islets he owned to the Philippine government in 1974. President Ferdinand Marcos later declared the ceded islands as an integral part of the Philippine territory and called them the Kalayan group in Presidential decrees he signed.[248] The decree also defined the EEZ around the Philippines and all of the islands. The Philippines occupied five features in 1974 and three others, including Commodore Reef, four years later. Manila justified these actions by saying that the islands were *terra*

243 *Continental Shelf Act, 1966*, 3.

244 Valencia, Van Dyke, and Ludwig, *Sharing the Resources of the South China Sea*, 31:36.

245 Ibid.

246 Mak, "Sovereignty in ASEAN," 113.

247 Ibid.

248 Valencia, Van Dyke, and Ludwig, *Sharing the Resources of the South China Sea*, 31:34.

nullius and using the 1951 San Francisco Peace Treaty as a legal basis. The treaty acknowledged that the Spratlys were "under the trusteeship of the Allied Powers" and that no Allied country formally possessed them in the 1950s.[249] One of the Philippine claims caused an incident with Malaysia. In 1988, Malaysia seized three Philippine-flagged fishing boats and arrested 49 fishermen accused of illegal fishing near Commodore Reef.[250] Another incident was with Vietnam in the Kalayan Group when a Filipino fisherman was shot by the Vietnamese while collecting sea cucumber at Tennent Reef.[251]

Different from the other three Southeast Asian countries, Vietnam emphasizes its claim in the South China Sea based on its long history in the region. An official document from the period of King Le Thanh Tong (1460-1497) incorporates the Paracels and Spratlys into Vietnam's territory.[252] Some documents from the 17th and 18th centuries supported Vietnam's claim, which reported several occasions when Vietnamese assisted grounded foreign merchant ships in the Paracels.[253] Vietnam used these reports to claim sovereignty over the Paracels. The claim to the Spratlys originated in the French legacy in the region. France occupied nine islets in the Spratly Islands from 1933 to 1939 and submitted a formal notice in the French Official Journal in 1933.[254] Following independence, Vietnam inherited French sovereignty based on the principle of *uti possidetis juris*. Vietnam's claim in the Paracels coincided with China's and caused major disputes. In January 1974, 11 Chinese warships, including a destroyer and a

---

249 Ibid.

250 Johan Saravanamuttu, "Malaysia's Approach to Cooperation in the South China Sea," in *Non-Traditional Security Issues and the South China Sea: Shaping a New Framework for Cooperation*, ed. Shicun Wu and Keyuan Zou, Contemporary Issues in the South China Sea (Farnham: Ashgate, 2014), 77.

251 "Philippines Lodges Protest over Shooting in Spratlys," *Deutsche Presse-Agentur*, January 19, 1998.

252 Valencia, Van Dyke, and Ludwig, *Sharing the Resources of the South China Sea*, 31:30.

253 Raul Pedrozo, "China Versus Vietnam: An Analysis of the Competing Claims in the South China Sea," *CNA Occasional Paper. Arlington, VA: Center for Naval Analysis*, 2014, 45, https://www.cna.org/CNA_files/PDF/IOP-2014-U-008433.pdf.

254 Mara C. Hurwitt, "U.S. Strategy in Southeast Asia: The Spratly Islands Dispute" (Master's Thesis, U.S. Army Command and General Staff College, 1993), 16, http://www.dtic.mil/dtic/tr/fulltext/u2/a272828.pdf.

transport ship, repelled Vietnamese forces from the Paracel Islands.[255] Vuong Van Bac, Vietnamese Foreign Minister, described the incident:

> The People's Republic of China immediately resorted to military action, by dispatching several warships to the area and landing troops on the Paracels Islands [sic]. On January 19th 1974, at 8:29 hours, Chinese troops opened fire on the Vietnamese troops on the island of Quang-Hoa (also known as Duncan Island). At the same time, Communist Chinese vessels engaged Vietnamese vessels stationed in the area, causing heavy casualties and material damages. On January 20th 1974, Communist Chinese warplanes which had been overflying the area on previous days, joined the action and bombed Vietnamese positions on the islands of Hoang-Sa (Pattle), Cam-Tuyen (Robert) and Vinh-Lan (Money). By the evening of January 20th 1974, Chinese troops have landed on all the islands of the Hoang-Sa archipelago, a [sic] and the Chinese naval task-force seemed prepared to head for the Truong-Sa (Spratley) archiplego [sic].[256]

The battle resulted in several deaths and wounded on both sides, damaged ships, and several Vietnamese and one American civilian captured by China.[257] Not long after the incident, Saigon decided to reinforce the islands it claimed in the Spratlys to anticipate China's encroachment instead of retaking the Paracels.[258] This incident was only one of several other disputes involving Vietnam and the other claimants, which were related to occupation, natural resource exploration, as well as fisheries.

The short review of sovereignty claims of Southeast Asian countries implies that two bases of claim exist in the South China Sea dispute. The first is an historical argument that becomes Vietnam's main argument. The other relies heavily on international law, which becomes the main reason for Brunei, Malaysia, and the Philippines to claim maritime zones in the South China Sea. The different perspectives in the South China Sea claims are one of the factors that make the disputes hard to resolve because the two are completely opposite and difficult to reconcile. The concept of sovereignty for the sea is a new notion in the international law compared to sovereignty

---

255 Jay H. Long, "The Paracels Incident: Implications for Chinese Policy," *Asian Affairs* 1, no. 4 (1974): 229.

256 Vuong Van Bac, "A Note from Vietnam Minister of Foreign Affairs Regarding the Incident in the Paracel Islands," January 21, 1974, http://vietnamproject.archives.msu.edu/fullrecord.php?kid=6-20-8C.

257 Long, "Paracels Incident," 230.

258 Ibid., 231.

on land. The UNCLOS only recognizes country's territorial sea as far as 12 nautical miles from the shore or the determined baselines. The territorial sea is the only zone for the coastal state to have full sovereignty in the sea, meaning that all within the territorial sea are subject to the country's law. Moreover, UNCLOS also gives the opportunity for the coastal state to exercise sovereign rights, not sovereignty, in maritime zones called the EEZ and the continental shelf that may be extended up to 200 nautical miles from shore. UNCLOS also defines the requirement for maritime features that can be used to generate maritime zones. This problem adds complexity to the dispute resolution in the South China Sea, an area that already has strong factors to be disputed, such as its geopolitical importance and natural resources, including oil, gas, and fisheries.

3. The Importance of the South China Sea

At least three factors contribute to the South China Sea's values that explain the unilateral claims by the six countries. The strategic values, the potential hydrocarbon reserves, and the presence of fishing grounds could be reasons for the disputants to claim maritime zones in the South China Sea. From a strategic point-of-view, the South China Sea contains two values. First is its location that connects the strategic straits, the Strait of Malacca, to the world's major economic powers: China, Japan, and South Korea. The South China Sea becomes one of the world's significant sea routes with around 11 million barrels of oil and six trillion cubic feet of LNG transiting this sea per day.[259] The second strategic advantage of the South China Sea is the presence of hundreds of unowned maritime features, which can be used to generate EEZs and continental shelf claims. The two strategic advantages become tools to justify countries' claims in combination with the natural resources the South China Sea possesses.

The South China Sea is famous for its potential oil and gas deposits. Existing literature provides various hydrocarbon reserve estimates because no significant prospecting has been conducted in the disputed areas. The reserves mostly lay in the Spratly Islands, in the South China Basin; whereas, geological evidence suggests the lack

259 "The South China Sea Is an Important World Energy Trade Route," US Energy Information Administration, April 4, 2013, http://www.eia.gov/todayinenergy/detail.cfm?id=10671.

of hydrocarbon resources in the Paracel Islands.[260] The first survey conducted by China in 1989 resulted in an optimistic report about the potential of the South China Sea. It predicted that the Spratly Islands contained "25 billion cubic meters of natural gas, 370,000 tons of phosphorous and 105 billion barrels of oil."[261] The report added that the James Shoal, a small bank off Sarawak that is claimed by Malaysia, China, and Taiwan, possesses approximately 91 billion barrels of oil.[262] The U.S. Geological Survey estimated that the Spratly Islands hold significant undiscovered hydrocarbon reserves of an average of 2.5 billion barrels of oil and 10.3 trillion cubic feet of gas.[263] All the reports provided were not the numbers of proven oil and gas reserves, but only an estimate since no real survey has been conducted in the disputed areas.

Given the potential of the South China Sea to be explored, all six claimants attempted to explore the areas. Malaysia was the earliest country operating in the South China Sea with several key oil fields off Sabah and Sarawak. Its status as the second largest oil and gas producer in Southeast Asia makes the South China Sea issue important, as the oil and gas sector contributes 29 percent of total government revenue.[264] Malaysia focuses on developing oil and gas field in the disputed areas to offset its declining production in old wells; its exploration was concentrated in areas between James Shoal and Louisa Reef, also claimed by China, Taiwan, and Brunei.[265] Production from these areas accounted for 70 percent of total Malaysia's oil and gas production.[266] Brunei began oil production in 1972 with nine of its oil fields lying within China's nine-dashed line with a total capacity reaching 143,000 billion barrels of oil per day in

260 "South China Sea."

261 John W. Garver, "China's Push through the South China Sea: The Interaction of Bureaucratic and National Interests," *The China Quarterly*, no. 132 (1992): 1015.

262 Ibid.

263 Christopher J. Schenk et al., "Assessment of Undiscovered Oil and Gas Resources of Southeast Asia, 2010" (U.S. Geological Survey, June 2010), http://pubs.usgs.gov/fs/2010/3015/pdf/FS10-3015.pdf.

264 The 2014 data. "The World Factbook: Malaysia," *The CIA World Factbook*, last updated February 11, 2016, https://www.cia.gov/library/publications/the-world-factbook/geos/my.html.

265 Li Guoqiang, "China Sea Oil and Gas Resources," *China Institute of International Studies*, May 11, 2015, http://www.ciis.org.cn/english/2015-05/11/content_7894391.htm.

266 Ibid.

1992.[267] Malaysia's and Brunei's overlapping claims in the South China Sea had been a source of tensions between them in 2003. In that period, the relations of both countries heated up due to conflicting concessions awarded to different companies in the same area. Malaysia's Petronas granted rights of exploration to a U.S. company, Murphy Oil, at a time when Brunei was in the middle of negotiations with Total and Royal Dutch/ Shell.[268] Brunei sent a gunboat to block the access of a Murphy Oil drilling ship to the area, which Malaysia challenged by sending navy ships to prevent a Total Company ship from approaching the drill location.[269]

The Philippines started exploring the South China Sea in 1970 and made its first natural gas production in 1976.[270] The location was in the Reed Bank, one of the disputed features off Palawan, which was estimated to have up to 3.5 trillion cubic feet of natural gas and 165 million barrels of oil reserves.[271] Despite the abundant resources, the Philippine government failed to attract foreign investors to work on the Reed Bank. China's claim over the area has been the biggest obstacle to investment. Eduardo Manalac, a former Philippine energy under-secretary reveals the disappointment: "we went around the world to attract bidding. Nobody came. Not a single bid."[272] This expression recalled the 2011 confrontation with China in Reed Bank. The Philippines had awarded concessions in 2010 to a British oil and gas company, Forum Energy, to explore areas under the "Service Contract 72" (SC72) that covers Reed Bank. In February 2011, Forum Energy planned to survey the area by conducting a 3D seismic survey around the

---

267 "Territorial Disputes Simmer in Areas of South China Sea," *Oil and Gas Journal*, July 13, 1992, http://www.ogj.com/login.html.

268 Chien-Peng Chung, *Domestic Politics, International Bargaining and China's Territorial Disputes*, Politics in Asia Series (London ; New York: RoutledgeCurzon, 2004).

269 Ibid.

270 Michael Hogan, "Oceans and Seas: South China Sea," *The Encyclopedia of Earth*, May 14, 2013, http://www.eoearth.org/view/article/156127/.

271 Christopher Len, "Reed Bank: South China Sea Flashpoint," *Asia Times Online*, June 3, 2014, http://www.atimes.com/atimes/Southeast_Asia/SEA-01-030614.html.

272 "Stirring Up the South China Sea (IV): Oil in Troubled Waters," *Asia Report* (Brussels: International Crisis Group, January 26, 2016), 14, http://www.crisisgroup.org/~/media/Files/asia/north-east-asia/275-stirring-up-the-south-china-sea-iv-oil-in-troubled-waters.pdf.

Sampaguita oil field around Reed Bank.[273] On March 2, the survey ship began its activity surveying Reed Bank and the surrounding waters for oil. Apparently, two Chinese Coast Guard vessels harassed and forced the survey ship to halt its activity. The Philippine military sent two surveillance aircraft to the disputed area to investigate the incident.[274] The report of investigation confirms the harassment by "two white Chinese patrol boats labeled no. 71 and no. 75," and that both patrol boats "threatened to ram the research vessel M/V *Venture*."[275] The incident resulted in the area remaining underdeveloped.

Vietnam started its quest for oil and gas in the South China Sea in the 1970s when the new ruler, the Vietnam Communist Party (VCP), defined the South China Sea as a top priority.[276] Vietnam, however, was only able to extract its first barrel of oil in 1986 after receiving assistance from the Soviet Union, with a focus in the White Tiger oilfield situated in the Cuu Long basin off the Mekong Delta.[277] The discovery of natural resources then expanded to the southern South China Sea as Vietnam moved to occupy three features: Vanguard Bank, Prince Consort Bank, and Grainger Bank, which had been already leased by China to the Crestone Energy Corporation.[278] The occupation might be Vietnam's response to the Chinese concession given to Crestone on May 8, 1992. The development of the new area, called Wanan Bei by the Chinese, continued as Vietnam reached agreement in 1992 with Nopec, a Norwegian company, to survey the areas.[279] Furthermore, Vietnam awarded concessions to VietSovpetro[280] and U.S. oil company Conoco to conduct drilling operations in the same locations as Crestone area.[281] The

---

273 "Philippines and China: An Encounter in Reed Bank," *Stratfor*, March 4, 2011, https://www.stratfor.com/analysis/philippines-and-china-encounter-reed-bank.

274 Ibid.

275 Ibid.

276 "Oil in Troubled Waters," 11.

277 Ibid.

278 Tom Hung Kang, "Vietnam and the Spratly Islands Dispute since 1992" (Master's Thesis, Naval Postgraduate School, 2000), 18.

279 Ibid.

280 Ibid.

281 Stein Tonnesson, "The Economic Dimension: Natural Resources and Sea Lanes," in *War or Peace in the South China Sea?*, ed. Timo Kivimäki, NIAS Reports, no. 45 (Copenhagen: NIAS Press, 2002), 56.

companies established the first oil rig in the Wanan Bei block in 1994. A few months later, China sent two frigates to the disputed areas to block the Vietnamese oil rig and drove away one Vietnamese supply ship.[282] The Chinese government justified this incident as a necessary action to protect "China's sovereignty and maritime interests."[283] The contention in the areas continued several years later. Vietnam, again, signed an oil contract with ExxonMobil in 2008 in the same location as Vanguard Bank. Tension rose in 2011 due to China's opposition to Vietnam's exploration plan. In the middle of the dispute, Chinese vessels reportedly cut the cables of Vietnamese seismic ships in two different instances.[284] On another occasion, Beijing organized a group of fishing vessels to block a Vietnamese survey ship from operating in the disputed area, while China's ship conducted an oil and gas survey while escorted by Chinese warships.[285] Like Reed Bank, development is stagnant in areas disputed by Vietnam and China in Wanan Bei.

Fishery is another source of contention in the disputed areas as shown in several incidents that involved military or law-enforcement units and fishing vessels. The FAO ranked Area 71,[286] which includes the South China Sea, as the world's third largest fish producer after the Northwest Pacific and the Southeast Pacific, with the total fish landings in 2009 reaching 11.2 million tons, increasing steadily from just 540,000 tons in 1950.[287] The types of fish targeted by the fishermen are pelagic fishes, which includes tunas, sharks, herrings, sardines, squids, and other marine species. Among them, tunas are the main production in the region, which became the world's leading tuna fishery as

---

282 Philip Shenon, "China Sends Warships to Vietnam Oil Site," *The New York Times*, July 21, 1994, http://www.lexisnexis.com.libproxy.nps.edu/lnacui2api/api/version1/getDocCui?lni=3S89-YP90-008G-F1FY&csi=6742&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true.

283 Ibid.

284 Shicun Wu, *Solving Disputes for Regional Cooperation and Development in the South China Sea: A Chinese Perspective*, Chandos Asian Studies Series (Witney, Oxford: Chandos, 2013), 115.

285 "Oil on Troubled Waters: Two Case Studies in a Disputed Sea," *The Economist*, January 24, 2015, http://www.economist.com/news/asia/21640403-two-case-studies-disputed-sea-oil-troubled-waters.

286 FAO divides the world into 19 major fishing areas for statistical purpose. Area 71 includes the South China Sea, Sulu-Celebes Sea, Arafura Timor Sea, and the Gulf of Thailand.

287 FAO Fisheries and Aquaculture Dept and Food and Agriculture Organization of the United Nations, *World Marine Fishery Resources*, 165.

the size of the catch reached 1.6 million tons in 2009.[288] Despite the promising statistical data, the fishery stocks in the South China Sea were reportedly overexploited, which caused decline in some areas. One of the reasons for the deterioration in production was illegal fishing.

Besides the environmental impact it causes, illegal fishing by neighboring countries could be the root of tensions as demonstrated in the disputed Spratly Islands. No less than twelve incidents related to illegal fishing were recorded in the South China Sea that involved China, Malaysia, the Philippines, and Vietnam. Some of those incidents were only expulsion from the fishing grounds, while others involved gunfire in the form of warning shots. An example of confrontation related to the fishery was the naval standoff between the Philippines and China in the Scarborough Shoal in 2012. On April 10, 2012, a Philippine cutter BRP *Gregorio del Pilar* conducted boarding operations onboard eight Chinese fishing vessels that were suspected of conducting fishing activity in areas claimed by the Philippines. The boarding team found that the Chinese fishermen illegally caught "corals, giant clams and live sharks."[289] The Philippine Navy intended to arrest the eight vessels before two Chinese coast guard cutters prevented them from doing so. This stand-off impacted both countries' relations and caused further tensions. The violence sometimes resulted in casualties, as shown in the May 26, 2000 incident, where shots by Philippine officials caused the death of a Chinese fisherman.[290] Not only with China, fishery-related conflict between ASEAN members was not something impossible. In January 1999, shots by Vietnamese soldiers at Tennent Reef in Kalayan Group caused a Philippine fisherman to be seriously wounded in the stomach, which led the Philippines to lodge a formal protest to the Vietnamese authority.[291] These instances demonstrate

---

288 Ibid., 165–6.

289 Renato Cruz De Castro, "China's Realpolitik Approach in the South China Sea Dispute: The Case of the 2012 Scarborough Shoal Stand-Off" (Managing Tensions in the South China Sea, Washington, DC: Center for Strategic and International Studies, 2013), 4, http://csis.org/files/attachments/130606_DeCastro_ConferencePaper.pdf.

290 "China Makes Representations to the Philippines on Killing of Fisherman," *Xinhua News Agency*, June 2, 2000, quoted in "Timeline: 1955-Present," *Center for New American Security*, accessed February 7, 2016, http://www.cnas.org/flashpoints/timeline.

291 "Philippines Lodges Protest over Shooting in Spratlys."

how the disputes over maritime zones that related to the fisheries could heat up inter-state relations.

4. Seeking Possible Peaceful Settlement Mechanisms for the South China Sea Disputes

Do the interstate disputes in the South China Sea always end in violence? The answer is certainly yes if we only refer to the above discussion. This section intends to show how sovereignty disputes over maritime features and the presence of natural sources are the primary obstacles for the claimants to reach peaceful solutions. While the South China Sea has become one of the maritime flashpoints in the world, the claimants actually have attempted to establish a certain dispute prevention mechanism. On November 4, 2002, ASEAN members and China signed the Declaration on the Conduct of Parties in the South China Sea (DOC). The purpose of the DOC is to prevent future disagreements from escalating into military actions, as written in Article 10:

> The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.[292]

Even though this article clearly encourages the signatories to avoid militarization, some countries still took a hard stance in managing the disputes. Evidence shows that the DOC could not prevent dispute militarization, as at least ten incidents between the claimants, especially involving China, still ended in hard measures using military force (Table 6), even though the number of intra-ASEAN conflict in the South China Sea decreased significantly. Another milestone in the South China Sea was the signing of the Guidelines for the Implementation of the DOC in July 2011. However, many scholars view this new agreement pessimistically as it does not mention the Code of Conduct as written in Article 10 of the DOC.[293] Furthermore, the failure of the 2012 ASEAN

---

292 "Declaration on the Conduct of Parties in the South China Sea," Article 10, Association of Southeast Asian Nations, November 4, 2002, http://www.asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2.

293 Ching Chang, "Examining the Flaws of a South China Sea Code of Conduct," *The Diplomat*, October 20, 2015, http://thediplomat.com/2015/10/examining-the-flaws-of-the-south-china-sea-code-of-conduct/.

Regional Forum (ARF) to issue a joint *communiqué* made the dispute resolution far from over. The meeting took place when Cambodia chaired ASEAN, given the suspicions about the failure of the ARF as Cambodia had received at least US$10 billion loans and investment from China.[294]

Besides the effort to implement a preventive mechanism, disputing parties had put some efforts towards peaceful approach. As discussed in the previous chapters, this thesis identifies that three peaceful dispute settlements had been practiced in Southeast Asia, namely bilateral delimitation, third-party settlement, and joint-development. Among so many overlapping claims, only in two cases had countries agreed on maritime boundaries delimitations in the South China Sea. The first was between Indonesia and Malaysia in 1969, when both countries finalized their continental shelf limits. Indonesia and Vietnam concluded another maritime delimitation in the area when signing an agreement concerning the continental shelf boundary on June 11, 2003. This agreement connects the 1969 Indonesia-Malaysia continental shelf boundary. The two agreements could only be possible because of the position of Indonesia as a non-claimant. Indonesia has denied any involvement in the South China Sea dispute since the beginning, although China's nine-dashed line could be interpreted as encroaching on Indonesia's EEZ. The absence of any Indonesian claim to islands or features in the South China Sea was the most prominent factor for Malaysia and Vietnam to agree on maritime delimitation. No positive indications signal any other overlapping claims to be concluded through this mechanism.

Although the claimants in these two cases reached peaceful settlements through bilateral negotiations, the South China Sea claimants have never adopted third-party dispute settlement mechanisms like Indonesia, Malaysia, and Singapore did in previous years. Recent developments in the South China Sea dispute show the Philippines's effort to bring the dispute against China to international arbitration. This initiation met an obstacle as China has rejected internationalization of this dispute, including international arbitration. Facing China's refusal, the Philippines submitted the dispute to the ITLOS on January 22, 2013. Manila then brought the case to the arbitral tribunal as an *ad hoc*

294 Luke Hunt, "ASEAN Summit Fallout Continues," *The Diplomat*, July 20, 2012, http://thediplomat.com/2012/07/asean-summit-fallout-continues-on/.

arbitration as mandated by the UNCLOS since the two parties did not agree on a particular form of arbitration.[295] The current status of the case is pending, but the Court decided in October 2015 that "it has jurisdiction in the case and will hold hearings."[296] The final resolution of the case is unknown and it is unlikely to be solved in the near future considering China's position. Even if the court votes for the Philippines in the final decision, nobody can guarantee that China will obey the court's decision as China had never involved and agreed on this mechanism.

The last peaceful mechanism is joint-development, which only succeeded in one example. Brunei and Malaysia had agreed on settling their overlapping claims in the South China Sea when both sides chose joint-development in 2009.[297] Both countries could reach this agreement because their claims were based on the Law of the Sea, as the core of the claims refers to the same source. Another effort of joint-development was the Joint Marine Seismic Undertaking (JMSU) between the Philippines, Vietnam, and China in 2005. The JMSU was actually intended to be the first phase in the future joint-development arrangement between the three countries. The Philippine government finally cancelled the JMSU after receiving broad rejections from the public and the Senates, which accused the JMSU as a loss for the Philippines as it took place outside the area China and Vietnam claimed.[298] The Chinese authority itself did not refuse the possibility of joint development, as reflected in Deng Xiaoping's statement that preferred joint development rather than military conflict.[299] However, joint development with China is unlikely as long as sovereignty is involved in the dispute, since China asserts that joint

295 Batongbacal, "Arbitration 101."

296 Jane Perlez, "In Victory for Philippines, Hague Court to Hear Dispute Over South China Sea," *The New York Times*, October 30, 2015, http://www.nytimes.com/2015/10/31/world/asia/south-china-sea-philippines-hague.html.

297 See Chapter 3 for the detail of the case.

298 Ana Placida D. Espina, "Recent Developments in the South China Sea and Prospects for Joint Development," RCAPS Working Paper Series "Dojo," 2012, 11, http://www.apu.ac.jp/rcaps/uploads/fckeditor/publications/workingPapers/RCAPS_RPD-12001.pdf.

299 Ibid., 10.

development is only possible when partner countries acknowledge the sovereignty of China in the disputed area.[300]

The three possible peaceful mechanisms seem difficult to pursue due to the nature of the dispute itself. What complicates it is that the conflicts in the South China Sea blend sovereignty considerations and economics. Since the notion of sovereignty was introduced in the 1648 Westphalia Treaty, this issue has been sensitive for every country. The same case applies in the South China Sea, where no country is likely to give up its claim. In addition to that, the presence of abundant hydrocarbon reserves in the disputed areas adds the value to the area so that every claimant will use military force to defend its claim.

D. SUMMARY

Southeast Asian countries have engaged in some military conflicts in maritime disputes. This chapter identifies five hot spots in Southeast Asian waters, namely the Andaman Sea, the Singapore Strait, the Gulf of Thailand, Ambalat, and the South China Sea. The detailed discussion of militarized maritime disputes in Southeast Asia shows that military action is common in disputed areas that are rich in natural resources and have contested sovereignty. Greater in-depth analysis of the South China Sea disputes confirms this thesis. Compared to other places, the South China Sea have had more incidents related to sovereignty and maritime claims. Six countries claim sovereignty over islets and other maritime features spread in the South China Sea with different arguments. The first category is the historical argument to justify the claim in the South China Sea, while the other is based on the rules stated in the UNCLOS. These two different perspectives make the overlapping claims difficult to reconcile. Furthermore, the abundant oil and gas reserves the South China Sea holds compel the claimants to use any possible means to respond to other claims, including military forces.

[300] Ibid.

VI. CONCLUSION

This thesis has identified the impact of natural resources and sovereignty disputes on maritime disputes in Southeast Asia to identify the conditions under which Southeast Asian countries have pursued peaceful measures or military actions in responding to such conflicts. This question arose from the observation of different paths taken by Southeast Asian countries in their maritime disputes, namely delimitation arrangements, joint development, third-party settlements, and militarization. This thesis examined four case studies from those outcomes to find the relationship between the two factors and the outcomes. The case studies discussed in this thesis are: 1) the maritime delimitation between Indonesia and Singapore in the Singapore Strait; 2) joint-development arrangements in the Gulf of Thailand; 3) a dispute between Singapore and Malaysia over Pedra Branca, Middle Rocks, and South Ledge; and 4) maritime disputes in the South China Sea. The analysis of the four case studies reveals that the presence or absence of natural resources and sovereignty disputes affects the decisions that countries made in their maritime disputes.

This thesis identifies four circumstances characterized by the presence or absence of natural resources and sovereignty issues that influence the outcome of maritime disputes in Southeast Asia. Among those, ASEAN members managed to resolve or handle maritime disputes peacefully according to the TAC norms in three circumstances: in the absence of natural resources and sovereignty disputes, in disputes that include sovereignty issues in resource-lack areas, and in areas that contain abundant natural resources without sovereignty problems over islands or other maritime features. In addition to that, only one type of maritime dispute fails to be settled peacefully, namely ones that involve sovereignty disputes over islands or other features in resource-rich areas. This chapter will first summarize the findings concerning the roles of the two variables—natural resources and sovereignty disputes—in the case studies to answer the research question. This chapter will also address possible outcomes of ongoing disputes and unresolved maritime boundaries in Southeast Asia using the four hypotheses proposed in this thesis.

A. ROLES OF NATURAL RESOURCES AND SOVEREIGNTY ISSUES IN SOUTHEAST ASIAN MARITIME DISPUTES

1. Natural Resources

This thesis found that natural resources are important factors for Southeast Asian countries in determining the course of disputes. The more valuable the areas, the stronger the countries defend their claims; in contrast, the less beneficial the disputed seas, the greater the incentive to compromise and seek resolution. Natural resources can be anything priceless, from hydrocarbon reserves to fisheries, which add value to the disputed areas. Besides that, the strategic value of the seas is also considered to be important as shown in several places, such as the Singapore Strait and the South China Sea. However, the presence of oil and natural gas reserves seems to be the strongest reason that is considered by disputing countries, which influences their relations with the opposing country. This is because international law, in this case UNCLOS, rules that every coastal country possesses sovereign rights in the seas beyond their land up to certain limits. One of those rights is the right to exploit what is beneath the seabed in the distance up to 200 nautical miles from the baselines or 300 nautical miles under certain circumstances. This allows the coastal states to exploit natural resources lying on the seabed for the benefit of their economies. The presence of these buried treasures often becomes the source of contention between two states that have overlapping continental shelf claims.

This thesis identifies two outcomes when maritime disputes took place in resource-poor areas: bilateral delimitation agreements and third-party settlements. In the discussion about maritime delimitation arrangements, most of the cases took place in resource-poor areas. The maritime boundary agreement can be interpreted as a compromise between two countries that ends their maritime border disputes permanently. The discussion about all maritime delimitations in Southeast Asia in Chapter II reveals that the absence of natural resources is one of the factors that ease bilateral negotiations to reach final agreements on fixed maritime boundaries. This thesis uses delimitation agreements between Singapore and Indonesia in the Singapore Strait as a case study to demonstrate how these two countries eventually finalized their maritime borders. The

process of delimitation took place in three periods: 1973, 2009, and 2014. By the signing of the 2014 agreement, Indonesia and Singapore left no more maritime boundaries to be drawn between them. The Singapore Strait is an example of an area that lacks natural resources even though it possesses high strategic value. One exception is the continental shelf agreement in 1969 between Indonesia and Malaysia, which took place in the Natuna Sea and the South China Sea that are known for being rich in hydrocarbon reserves. This happened because Jakarta and Singapore signed the agreement before they actually knew the potential of the areas, and because Indonesia needed to secure Malaysia's support for the concept of an archipelagic nation that Indonesia introduced to the international community. Other than this case, all delimitation arrangements in Southeast Asia lay in resource-poor areas.

Another approach Southeast Asian countries used in resource-poor areas was dispute settlement through international arbitration. The analysis of the Pedra Branca dispute between Malaysia and Singapore demonstrates the minimal role of natural resources in the dispute. The Strait of Singapore has no basins containing either petroleum products or natural gas. The Strait also produces a limited amount of marine resources. Both countries failed to solve the dispute through bilateral negotiation due to the sovereignty dispute over three features. The absence of natural resources, however, provided an opportunity for both parties to solve the dispute, albeit through unusual means: international arbitration.

Although maritime delimitations and third-party settlements tend to happen in resource-poor areas, Southeast Asian countries used joint development and militarization to address maritime disputes in resource-rich areas. This thesis has proven that the presence of abundant natural resources is the main factor in employing the joint-development approach. Southeast Asian countries have adopted joint-development arrangements since 1979 when Malaysia and Thailand agreed on jointly developing disputed seas in the Gulf of Thailand. Since then, six other joint-development agreements have been signed. The most recent was the Brunei and Malaysia agreement to cooperate in disputed areas in the South China Sea in 2009. Joint development is a provisional measure countries may take if the agreement over maritime boundaries is hard to achieve.

Joint development is not the only form of provisional arrangement UNCLOS mentions, but it always happens in resource-rich areas. The discussion of joint development practice in the Gulf of Thailand reveals the importance of hydrocarbon reserves in making countries agree on such arrangements. The economic potential from oil and natural gas they could exploit prevented them from reaching permanent delimitation; thus, joint development can be seen as a win-win option that countries could choose even though it is temporary in nature. Malaysia, Thailand, and Vietnam have enjoyed joint-development arrangements from oil and gas companies operating in the overlapping areas without having permanent delimitations. Cambodia had tried to make a similar agreement with Thailand, but unfortunately it has not yet been implemented because tensions between the two countries have sometimes heated up over unrelated issues. Regardless of the outcome experienced by the countries, the presence of abundant natural resources, proven or unproven, determines the potential for joint development.

Unlike a peaceful outcome like joint development, maritime disputes in resource-rich areas may also end in violence. The overlapping claims in the South China Sea are the best example to show the failures of many countries to restrain themselves from deploying military forces in disputes that lie in resource-rich areas. The South China Sea is known for its oil and natural gas reserves, one of the reasons to explain China's interest in the area despite the historical justifications they claim. Similar to the Gulf of Thailand, potential economic benefits from natural resources hinder most efforts to seek a permanent resolution. In the South China Sea disputes, four Southeast Asian claimants perceived natural resources as the main incentive for their claim since the claim over the EEZs and continental shelves involve attaining an exclusive privilege to extract the natural resources.

In brief, natural resources drove the disputing states to choose either a permanent or provisional resolution over their maritime disputes. The approach of having permanent outcomes through bilateral agreements or international arbitration mostly involves areas that lack natural resources. This shows the compliance of Southeast Asian countries to compromise in the absence of potential economic benefits. By contrast, they mostly resisted giving up their claims in resource-rich areas as shown in joint development and

dispute militarization. The former is a temporary peaceful solution, while the latter does not reach compromise at all with deployment of military forces. The value of the areas due to the presence of natural resources seems to be the main reason for the countries' failure to reach permanent resolution. The two main outcomes—permanent and non-permanent resolutions—then further diverged based on the next variable: sovereignty issues.

2. Sovereignty Issues

Sovereignty issues have always been serious for Southeast Asian countries. This thesis finds a strong correlation between sovereignty issues and natural resources in shaping the final outcomes countries made for their maritime disputes. The analysis of four case studies showed that the absence of sovereignty issues over the disputed seas simplified reaching consensus; whereas, sovereignty disputes complicated the problems. Sovereignty disputes meant here are those applied to land, islands, or other maritime features. According to the UNCLOS, sovereign states cannot claim sovereignty over the EEZ and continental shelf; instead, they only have sovereign rights over those maritime zones. Coastal states can only claim sovereignty over land, islands, and other features that fulfill requirements as mentioned in the UNCLOS. The status of these features is important because they generate the EEZs and the continental shelves. The relations between sovereignty issues and natural resources can be seen in the final outcomes. Permanent and non-permanent solutions influenced by natural resources take different courses when associated with the sovereignty problem.

This thesis identified two permanent resolutions that resulted from the absence of natural resources: delimitation agreements and third-party settlements. Disputing countries committed to bilaterally negotiate their maritime problems if no disputes concerned island or features sovereignty. When Indonesia and Singapore managed to finalize their maritime borders in the Singapore Strait, sovereignty statuses of all islands spread across the strait were clear. Their former colonial powers made it clear in the 1824 Anglo-Dutch Treaty. In the treaty, the British and the Dutch agreed to use the main route of sea traffic in the Singapore Strait as a line separating their territories. Anything north

of the route belonged to the British, whereas any islands lying south of the route belonged to the Dutch. Indonesia as a former Dutch colony and Singapore as a former British colony retained this principle when they became independent states. Since both countries had no sovereignty problems in the Singapore Strait, the agreement was easily achieved.

A different situation applies to the Malaysian and Singaporean dispute over Pedra Branca, Middle Rocks, and South Ledge. While the disputed location is also in the resource-poor Singapore Strait, Malaysia and Singapore had different perspectives regarding the sovereignty of disputed features. Malaysia argued that the sovereignty over Pedra Branca and the two others had always remained under Johor's administration. On the other hand, Singapore claimed that the sovereignty of the islands had passed to the British since 1847, when they built a lighthouse on Pedra Branca. Both countries then brought the dispute to international arbitration after failing to reach a compromise during bilateral negotiations. This case shows that sovereignty issues would worsen the disputes and prevent the disputing parties from reaching a solution through bilateral channels. The choice of using international arbitration then became a feasible solution for Malaysia and Singapore to end the conflict situated in a resource-poor sea like the Singapore Strait. Even though each party had a 50 percent chance of losing, the approach through international arbitration was still considered acceptable since no other stakes would be lost to the opposing party. Their behaviors might have been different if the disputed areas contained abundant natural resources. The Indonesia-Malaysia dispute in the resource-rich Ambalat region illustrated how the conflict remains unresolved even though the ICJ has decided the ownership of Sipadan and Ligitan Islands. Unlike Singapore and Malaysia's joint-maritime survey post-ICJ decision, Indonesia and Malaysia have had several military skirmishes in the disputed areas. The story of Pedra Branca reflects the greater chance for intra-state disputes to be solved, even though the process might be lengthy and difficult due to sovereignty issues.

Sovereignty performs a similar role in non-permanent solutions adopted by Southeast Asian countries: an absence of sovereignty problems will have greater likelihood of reaching compromise than disputes with sovereignty issues. Joint development is the option when no sovereignty disputes aggravate maritime conflicts in

resource-rich areas like the Gulf of Thailand. Both joint-development arrangements discussed in Chapter III concerned overlapping areas free from sovereignty issues. Malaysia and Thailand signed the MoU of joint development in 1979 agreeing to establish the joint authority to develop their overlapping area. When signing the MoU, both countries lacked sovereignty issues in the overlapping claims since all sovereignty issues for offshore islands in the Gulf had been resolved with the 1909 Anglo-Siamese Treaty. The claims were only a matter of the differing UNCLOS interpretation. The same case applies to Malaysia and Vietnam when they agreed on signing a joint development arrangement in the Gulf of Thailand. The unilateral claims by Malaysia and Vietnam were not related to the sovereignty dispute, but the UNCLOS understanding. The countries did not even share land borders, so a sovereignty problem is nearly impossible. Overall, the Gulf of Thailand is an area with few sovereignty disputes resulting from treaties signed during colonial eras. Clear sovereignty status would probably be the best reason to explain why Southeast Asian countries in the Gulf of Thailand managed to establish some joint development arrangements.

Unlike the rich and peaceful Gulf of Thailand, country claimants in the South China Sea tend to use military force to respond to other's actions. Having the same abundant natural resources as the Gulf of Thailand, hundreds of features without clear sovereignty status spread throughout the South China Sea added to the complexity of the disputes. The sovereignty disputes on maritime features in the South China Sea emerged for two different reasons. One group used the UNCLOS to claim sovereignty over these features; the other based their claims on history. The unresolved sovereignty of these features in the South China Sea stemmed from the failure of colonial powers in Southeast Asia to claim possession of them, because none of them were uninhabited nor contained any advantages for the Western imperial powers. The colonial legacy was important for Southeast Asian countries since they mostly accepted their boundaries based on what they inherited from the ruling powers. However, some countries then considered features in the South China Sea as *terra nullius*. The combination of abundant hydrocarbon reserves and widespread sovereignty problems has resulted in prolonged disputes with the involvement of military forces.

3. The Pattern of Maritime Dispute Outcomes in Southeast Asia

The brief summary of the role of the two variables—natural resources and sovereignty—in Southeast Asian maritime disputes, which resulted in four different outcomes, brings this thesis to four conclusions. First, Southeast Asian countries easily cooperate to seek maritime delimitation through bilateral discussions for the disputes that are located in resource-poor areas with no sovereignty problem over surrounding features. Second, joint development is the most common approach when natural resources are abundant and sovereignty disputes are low. Third, when two states engage in sovereignty disputes in resource-rich areas, third-party settlement through international arbitration is the preferable option. Fourth, disputing countries are likely to engage in military conflicts when they dispute sovereignty over islands in seas that contain an abundance of oil and natural gas reserves. The first three are the conditions where ASEAN members are likely to have peaceful resolution or settlement according to the TAC norms for their maritime disputes; whereas, such peaceful ways are unlikely adhered by Southeast Asian countries when having maritime disputes in areas with abundant hydrocarbon resources that involve sovereignty disputes over islands or maritime features. Table 7 depicts the relations between natural resources and sovereignty that result in the four outcomes.

Table 7. Natural Resources, Sovereignty, and the Dispute Outcomes

		Sovereignty Issues?	
		No	**Yes**
Natural Resources?	**No**	Bilateral agreements	Third-party settlement
	Yes	Joint development	Military action

B. THE PROSPECT OF ONGOING MARITIME DISPUTES IN SOUTHEAST ASIA

This thesis identifies causal factors of the four maritime dispute outcomes experienced by Southeast Asian countries. In each outcome, both natural resources and sovereignty over islands play important roles. The next important point to address is undelimited maritime boundaries and ongoing maritime disputes in Southeast Asia. Sam Bateman et al., suggest that no more than twenty percent of 60 maritime boundaries in

Southeast Asian waters have been delimited.[301] Most maritime boundaries remain undelimited because three types of maritime zones might have to be delimited in the areas, namely territorial seas, EEZs, and continental shelves. An example of an incomplete delimitation of maritime boundary is the agreement between Indonesia and Malaysia in the northern part of the Strait of Malacca. In 1969, both countries signed an agreement to delimit the seabed of the Strait of Malacca after they signed and ratified the 1958 Convention on the Continental Shelf. The 1969 agreement was the only document related to the maritime boundaries that Indonesia and Malaysia have signed until now; they left the EEZ undelimited. Other instances of unresolved maritime boundaries are between Malaysia and Singapore in the Singapore Strait and between Indonesia and Malaysia in the Sulawesi Sea following two ICJ decisions. And, of course, people worry that the South China Sea disputes will destabilize the region. Facing so many uncertainties in the maritime realm, coastal states should anticipate the most probable outcome for these ongoing disputes because any unclear boundaries, including those at sea, could be a source of conflict.

This thesis was not originally intended as a forecasting tool for current or future maritime disputes in Southeast Asia; however, the findings of this thesis might be useful for prediction. Any government might hope to have final maritime boundaries in areas free from sovereignty issues and lacking natural resources. Malaysia and Indonesia could probably find a solution through bilateral negotiation for their undelimited EEZ in the northern part of the Strait of Malacca because the area fulfills the criteria. The same case applies for maritime boundaries around Pedra Branca and Middle Rocks. Since the ownership of Pedra Branca and Middle Rocks are no longer disputed, Malaysia and Singapore could probably manage to fix the maritime boundaries through bilateral negotiations. The maritime boundary delimitation in this area is important for two reasons. First, it will determine the ownership of South Ledge. Second, it will be used for delimiting the final boundaries in the Singapore Strait that requires the involvement of Indonesia. The joint survey conducted by Malaysia and Singapore could be a good sign

[301] Sam Bateman, Joshua Ho, and Jane Chan, *Good Order at Sea in Southeast Asia*, RSIS Policy Paper (Singapore: S. Rajaratnam School of International Studies, NTU, 2009), 16, http://www.rsis.edu.sg/wp-content/uploads/2014/07/PR090427_Good_Order_at_Sea_in_SEA.pdf.

for permanent delimitation. In Ambalat, joint development could be a temporary solution for Indonesia and Malaysia since the source of conflict, the ownership of Sipadan and Ligitan Islands, have been resolved through the ICJ decision. Achieving fixed maritime boundaries in Ambalat could be hard to achieve due to the presence of potential hydrocarbon reserves. Last, the South China Sea will produce tense conflicts when no countries willingly drop their claims. What Malaysia did to give up its claim over Louisa Reef is the best example to show that any country could turn contentious conflict into a certain arrangement like joint development for mutual benefit. The next question left unaddressed in this thesis is why some countries resolved their maritime disputes in a relatively brief time while others took decades or even left them unresolved. The possible answer might be related to the domestic politics of each country and interstate relations that are certainly beyond the scope of this thesis, and thus needs further research.

LIST OF REFERENCES

Acharya, Amitav. "ASEAN at 40: Mid-Life Rejuvenation?," 2009. http://www.amitavacharya.com/sites/default/files/ASEAN's%20Progress%20and%20Perils.pdf.

———. *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*. 2nd ed. Politics in Asia Series. Milton Park: Routledge, 2009.

Amer, Ramses. "Expanding ASEAN's Conflict Management Framework in Southeast Asia: The Border Dispute Dimension." *Asian Journal of Political Science* 6, no. 2 (December 1998): 33–56. doi:10.1080/02185379808434124.

———. "Managing Border Disputes in South East Asia." *Kajian Malaysia* 18, no. 1 and 2 (2000): 30–60.

"Anglo-Dutch Treaty, London on March 17, 1824." Accessed August 19, 2015. http://historyofbengkulu.blogspot.com/2008/07/anglo-dutch-treaty-of-1824.html.

Anjaiah, Veeramalla. "Paracel Islands Dispute Still Lingers on after 40 Years." *The Jakarta Post*, January 19, 2014. http://www.thejakartapost.com/news/2014/01/19/paracel-islands-dispute-still-lingers-after-40-years.html%20.

Anwar, Dewi Fortuna. "Indonesia: National vs. Regional Resilience." In *Southeast Asian Perspectives on Security*, edited by Derek Da Cunha. Singapore: Institute of Southeast Asian Studies, 2000.

Arsana, I Made Andi. "Mapping a Good Fence with Singapore." *GeoPolitical Boundaries*, February 10, 2009. https://geoboundaries.wordpress.com/2009/02/10/mapping-a-good-fence-with-singapore/.

"ASEAN Charter, The." ASEAN Secretariat, 2008. http://www.asean.org/archive/publications/ASEAN-Charter.pdf.

Atlas of Mineral Resources of the ESCAP Region: Mineral Resources of Thailand. Vol. 16. Bangkok, Thailand: United Nations, Economic and Social Commission for Asia and the Pacific, 1989.

Bac, Vuong Van. "A Note from Vietnam Minister of Foreign Affairs Regarding the Incident in the Paracel Islands," January 21, 1974. http://vietnamproject.archives.msu.edu/fullrecord.php?kid=6-20-8C.

Bateman, Sam, Joshua Ho, and Jane Chan. *Good Order at Sea in Southeast Asia*. RSIS Policy Paper. Singapore: S. Rajaratnam School of International Studies, NTU, 2009. http://www.rsis.edu.sg/wp-content/uploads/2014/07/PR090427_Good_Order_at_Sea_in_SEA.pdf.

Batongbacal, Jay. “Arbitration 101: Philippines v. China.” *Asia Maritime Transparency Initiative*, January 21, 2015. http://amti.csis.org/arbitration-101-philippines-v-china/.

Beckman, Robert. “The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea.” *American Journal of International Law* 107, no. 1 (2013): 142–63.

Beckman, Robert, and Clive Howard Schofield. “Moving Beyond Disputes Over Island Sovereignty: ICJ Decision Sets Stage for Maritime Boundary Delimitation in the Singapore Strait.” *Ocean Development & International Law* 40, no. 1 (2009): 1–35. doi:10.1080/00908320802631551.

Beckman, Robert, and Leonardo Bernard. “Framework for the Joint Development of Hydrocarbon Resources.” Centre for International Law, National University of Singapore, 2010, http://cil.nus.edu.sg/wp/wp-content/uploads/2010/08/BECKMAN-AND-BERNARD-FRAMEWORK-FOR-THE-JOINT-DEVELOPMENT-OF-HYDROCARBON-RESOURCES.pdf.

Bin Saaid, M. Seth, September 21, 1953. http://www.mfa.gov.sg/content/dam/mfa/images/media_center/special_events/pedra_branca/Letterof19530921%28SingaporeMemorial%29.jpg.

Bristow, Damon. “Between the Devil and the Deep Blue Sea: Maritime Disputes between Association of South East Asian Nations (ASEAN) Member States.” *The RUSI Journal* 141, no. 4 (August 1, 1996): 31–37. doi:10.1080/03071849608446047.

Budianto, Lilian. “RI, Singapore Sign Maritime Boundary Agreement.” *The Jakarta Post*, March 11, 2009. http://www.thejakartapost.com/news/2009/03/11/ri-singapore-sign-maritime-boundary-agreement.html.

Butcher, John G. “The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea.” *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 35, no. 2 (2013): 235–57.

Carter, David B., and H. E. Goemans. “The Making of the Territorial Order: New Borders and the Emergence of Interstate Conflict.” *International Organization* 65, no. 2 (2011): 275–309. doi:10.1017/S0020818311000051.

Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore): Provisional Measures: Order. Hamburg, 2003. https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_12/Order.08.10.03.E.pdf.

“Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks, and South Ledge: Malaysia/Singapore: Memorial of Malaysia,” March 25, 2004. http://www.icj-cij.org/docket/files/130/14139.pdf.

"Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge: Malaysia/Singapore: Memorial of Singapore," March 25, 2004. http://www.icj-cij.org/docket/files/130/14133.pdf.

"Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/ Malaysia): Judgment of 17 December 2002." Hague: International Court of Justice, 2002. http://www.icj-cij.org/docket/files/102/7714.pdf.

Chambers, Paul W., and Siegfried O. Wolf. "Image-Formation at a Nation's Edge: Thai Perceptions of Its Border Dispute with Cambodia-Implications for South Asia," 2010. http://archiv.ub.uni-heidelberg.de/volltextserver/10459/.

Chang, Ching. "Examining the Flaws of a South China Sea Code of Conduct." *The Diplomat*, October 20, 2015. http://thediplomat.com/2015/10/examining-the-flaws-of-the-south-china-sea-code-of-conduct/.

Charney, Jonathan I., and Lewis M. Alexander, eds. *International Maritime Boundaries*. Vol. 1. Dordrecht: Martinus Nijhoff Publishers, 1993.

———. eds. *International Maritime Boundaries*. Vol. 2. Dordrecht: Martinus Nijhoff Publishers, 1993.

Cheong, Koon Hean. *Malaysia & Singapore: The Land Reclamation Case: From Dispute to Settlement*. Singapore: Straits Times Press Pte Ltd, 2013.

Chiozza, Giacomo, and Henk E. Goemans. "Avoiding Diversionary Targets." *Journal of Peace Research* 41, no. 4 (2004): 423–43. doi:10.2307/4149682.

"Chronological Lists of Ratifications Of, Accessions and Successions to the Convention and the Related Agreements as at 3 October 2014." *United Nations*, January 7, 2015. http://www.un.org/depts/los/reference_files/ chronological_lists_of_ratifications.htm.

Chung, Chien-Peng. *Domestic Politics, International Bargaining and China's Territorial Disputes*. Politics in Asia Series. London ; New York: RoutledgeCurzon, 2004.

Collins, Alan. *Security and Southeast Asia: Domestic, Regional, and Global Issues*. Boulder: Lynne Rienner Publishers, 2003.

———. *The Security Dilemmas of Southeast Asia*. Basingstoke: Macmillan, 2000.

Colson, David A., and Robert W. Smith, eds. *International Maritime Boundaries*. Vol. 5. Leiden: Martinus Nijhoff Publishers, 2005.

"Container Port Traffic (TEU: 20 Foot Equivalent Units)." The World Bank. Accessed September 2, 2015. http://data.worldbank.org/indicator/IS.SHP.GOOD.TU/ countries?page=2.

Continental Shelf Act, 1966. *Act 83*, 1966. http://faolex.fao.org/docs/pdf/mal1872.pdf.

"Convention on the Continental Shelf." United Nations Treaty Collection. Accessed July 23, 2015. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-4&chapter=21&lang=en.

Davenport, Tara. "Southeast Asian Approaches to Maritime Delimitation." *Asian Society of International Law: Singapore*, 2012. http://cil.nus.edu.sg/wp/wp-content/uploads/2010/08/TaraDavenport-ASIL-Southeast-Asian-Approaches-to-Maritime-Delimitation.pdf.

De Castro, Renato Cruz. "China's Realpolitik Approach in the South China Sea Dispute: The Case of the 2012 Scarborough Shoal Stand-Off." Washington, DC: Center for Strategic and International Studies, 2013. http://csis.org/files/attachments/130606_DeCastro_ConferencePaper.pdf.

"Declaration on the Conduct of Parties in the South China Sea." *Association of Southeast Asian Nations*, November 4, 2002. http://www.asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2.

Druce, Stephen C., and Efri Yoni Baikoeni. "Circumventing Conflict: The Indonesia-Malaysia Ambalat Block Dispute." In *Contemporary Conflicts in Southeast Asia: Towards a New ASEAN Way of Conflict Management*, edited by Mikio Oishi, 137–56. Singapore: Springer, 2016.

Espina, Ana Placida D. "Recent Developments in the South China Sea and Prospects for Joint Development," RCAPS Working Paper Series "Dojo," 2012. http://www.apu.ac.jp/rcaps/uploads/fckeditor/publications/workingPapers/RCAPS_RPD-12001.pdf.

FAO Fisheries and Aquaculture Dept., and Food and Agriculture Organization of the United Nations, eds. *Review of the State of World Marine Fishery Resources*. FAO Fisheries and Aquaculture Technical Paper 569. Rome, Italy: Food and Agriculture Organization of the United Nations, 2011. http://www.fao.org/docrep/015/i2389e/i2389e.pdf.

Forbes, Vivian Louis. *Indonesia's Delimited Maritime Boundaries*. Heidelberg: Springer, 2014.

Garver, John W. "China's Push through the South China Sea: The Interaction of Bureaucratic and National Interests." *The China Quarterly*, no. 132 (1992): 999–1028.

"General Information." International Tribunal for the Law of the Sea. Accessed December 19, 2015. https://www.itlos.org/en/general-information/.

Guoqiang, Li. “China Sea Oil and Gas Resources.” *China Institute of International Studies*, May 11, 2015. http://www.ciis.org.cn/english/2015-05/11/content_7894391.htm.

Guo, Rongxing. *The Land and Maritime Boundary Disputes of Asia*. Asian Political, Economic and Security Issues Series. New York: Nova Science Publishers, 2009.

Haftel, Yoram Z. *Regional Economic Institutions and Conflict Mitigation: Design, Implementation, and the Promise of Peace*. Michigan Studies in International Political Economy. Ann Arbor: University of Michigan Press, 2012.

Haller-Trost, Renate. “The Brunei-Malaysia Dispute over Territorial and Maritime Claims in International Law.” Edited by Clive Schofield and Martin Pratt. *IBRU*, Maritime briefing, 1, no. 3 (1994).

Hassan, Kalimullah. “KL Upbeat on Boosting Ties with Indonesia.” *The Straits Times*, July 19, 1993. http://www.lexisnexis.com.libproxy.nps.edu/lnacui2api/api/version1/getDocCui?lni=3SJD-RG70-0058-X4NB&csi=144965&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true.

Hensel, Paul R. “The ICOW Territorial Claims Data Set.” *ICOW Project*. Accessed May 19, 2015. http://www.paulhensel.org/icowterr.html.

Hensel, Paul R, and Sara McLaughlin Mitchell. “Issue Indivisibility and Territorial Claims.” *GeoJournal* 64, no. 4 (2005): 275–85. doi:10.1007/s10708-005-5803-3.

Ho, Joshua H. “The Security of Sea Lanes in Southeast Asia.” *Asian Survey* 46, no. 4 (August 1, 2006): 558–74. doi:10.1525/as.2006.46.4.558.

Hogan, Michael. “Oceans and Seas: South China Sea.” *The Encyclopedia of Earth*, May 14, 2013. http://www.eoearth.org/view/article/156127/.

———. “Singapore Strait.” *The Encyclopedia of Earth*, May 13, 2013. http://www.eoearth.org/view/article/170665/.

Hunt, Luke. “ASEAN Summit Fallout Continues.” *The Diplomat*, July 20, 2012. http://thediplomat.com/2012/07/asean-summit-fallout-continues-on/.

Hurwitt, Mara C. “U.S. Strategy in Southeast Asia: The Spratly Islands Dispute.” Master’s Thesis, U.S. Army Command and General Staff College, 1993. http://www.dtic.mil/dtic/tr/fulltext/u2/a272828.pdf.

Hussain, Zakir. “Singapore, Indonesia Sign Treaty on Maritime Borders in Eastern Singapore Strait.” Text. *The Straits Times*, September 3, 2014. http://www.straitstimes.com/asia/se-asia/singapore-indonesia-sign-treaty-on-maritime-borders-in-eastern-singapore-strait.

Huth, Paul K. *Standing Your Ground: Territorial Disputes and International Conflict*. Ann Arbor: University of Michigan Press, 1996.

Ibrahim, H. M., and Nazery Khalid. "Growing Shipping Traffic in the Strait of Malacca: Some Reflections on the Environmental Impact." presented at the Global Maritime and Intermodal Logistics Conference, Singapore, December 17, 2007. http://www.mima.gov.my/mima/wp-content/uploads/GMIL%20Spore%20_Dec07_.pdf.

"Indonesia, Singapore Sign Agreement on Territorial Boundaries." *Tempo.co*, September 4, 2014. http://en.tempo.co/read/news/2014/09/04/074604559/Indonesia-Singapore-Sign-Agreement-on-Territorial-Boundaries.

"Indonesia Submarine Capabilities." *NTI: Nuclear Threat Initiative*, August 2, 2013. http://www.nti.org/analysis/articles/indonesia-submarine-capabilities/.

International Court of Justice. "Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore): Summary of the Judgement of 23 May 2008," June 23, 2008. http://www.icj-cij.org/docket/files/130/14506.pdf.

"International Court of Justice—Case Concerning Sovereignty over Pedra Branca, Middle Rocks and South Ledge." *Ministry of Foreign Affairs: Singapore*. Accessed January 10, 2016. http://www.mfa.gov.sg/content/mfa/media_centre/special_events/pedrabranca.html.

Jacob, Paul. "Isles Row: Jakarta to Study Mediation Proposal." *The Straits Times*, September 9, 1994. http://www.lexisnexis.com.libproxy.nps.edu/lnacui2api/api/version1/getDocCui?lni=3SJD-PT90-0058-X25F&csi=144965&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true.

Jagota, S. P. *Maritime Boundary*. Publications on Ocean Development, v. 9. Dordrecht: M. Nijhoff, 1985.

Jayewardene, Hiran W. *The Regime of Islands in International Law*. Vol. 15. Publications on Ocean Development. Dordrecht: Martinus Nijhoff Publishers, 1990.

Kadir Mohamad. *Malaysia Singapore: Fifty Years of Contentions, 1965-2015*. Kuala Lumpur: The Other Press, 2015.

———. *Pacific Settlement of Disputes Based on International Law: Malaysia's Experiences at the International Law Court of Justice*. Occasional Paper, no. 1/2008. Kuala Lumpur: Institute of Diplomacy and Foreign Relations (IDFR), Ministry of Foreign Affairs, Malaysia, 2008.

Kang, Tom Hung. "Vietnam and the Spratly Islands Dispute since 1992." Master's thesis, Naval Postgraduate School, 2000.

"Kesepakatan Soeharto-Mahathir Bawa Sipadan-Ligitan ke Mahkamah Internasional [Soeharto-Mahathir Agreement to Bring Sipadan-Ligitan to the ICJ]." *Kompas Online*, October 8, 1996. http://www.library.ohiou.edu/indopubs/1996/10/07/0036.html.

Kongrawd, Somjade. "Thailand and Cambodia Maritime Dispute." GlobalSecurity.org, 2009. http://www.globalsecurity.org/military/library/report/2009/thailand-cambodia.pdf.

LaFond, Eugene C. "South China Sea." Encyclopedia Britannica. Accessed February 5, 2016. http://www.britannica.com/place/South-China-Sea.

Len, Christopher. "Reed Bank: South China Sea Flashpoint." *Asia Times Online*, June 3, 2014. http://www.atimes.com/atimes/Southeast_Asia/SEA-01-030614.html.

"List of Cases." *International Tribunal for the Law of the Sea*. Accessed January 4, 2016. https://www.itlos.org/cases/list-of-cases/.

"List of Cases Referred to the Court since 1946 by Date of Introduction." International Court of Justice. Accessed January 4, 2016. http://www.icj-cij.org/docket/index.php?p1=3&p2=2.

Long, Jay H. "The Paracels Incident: Implications for Chinese Policy." *Asian Affairs* 1, no. 4 (1974): 229–39.

Lubin, Gus. "Claims on the South China Sea." *Business Insider*, February 17, 2014. http://www.businessinsider.com/south-china-sea-territory-claims-map-2014-2.

Mak, Joon Nam. "Sovereignty in ASEAN and the Problem of Maritime Cooperation in the South China Sea." In *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime*, edited by W. S. G. Bateman and Ralf Emmers, 110–27. Routledge Security in Asia Pacific Series 9. London: Routledge, 2009.

Malanczuk, Peter, and Michael Barton Akehurst. *Akehurst's Modern Introduction to International Law*. 7th rev. ed. London; New York: Routledge, 1997.

"Malaysia: International Energy Data and Analysis." US Energy Information Administration, September 24, 2014. https://www.eia.gov/beta/international/analysis.cfm?iso=MYS.

"Malaysia: International Energy Data and Analysis." US Energy Information Administration. Accessed February 10, 2016. https://www.eia.gov/beta/international/analysis.cfm?iso=MYS.

Malaysia Minister of Foreign Affairs, and Republic of Singapore Minister for Foreign Affairs. "Special Agreement." International Court of Justice, July 24, 2003. http://www.icj-cij.org/docket/files/130/1785.pdf.

"Malaysia-Thailand Boundary." International Boundary Study. Office of the Geographer, US Department of State, November 15, 1965.

Mantajit, Jittima. "Joint Development in the Gulf of Thailand: Malaysia-Thailand Joint Development Area." Thailand Department of Mineral Fuels: Ministry of Energy, June 2011. http://cil.nus.edu.sg/wp/wp-content/uploads/2011/06/Session-5-JM-June11-pdf.pdf.

Marsetio. "Indonesian Sea Power." presented at the Special Guest Lecture, Naval Postgraduate School, February 9, 2015.

Mohamad, Mahathir. "Malaysia's Generosity." *Malaysia Today*, April 29, 2010. http://www.malaysia-today.net/malaysias-generosity/.

Morgan, Joseph R., and Mark J. Valencia, eds. *Atlas for Marine Policy in Southeast Asian Seas*. Berkeley: University of California Press, 1983.

"Move to Utilise 2001 MOU on Maritime Negotiations." *The Nation*, October 4, 2011. http://www.nationmultimedia.com/politics/Move-to-utilise-2001-MOU-on-maritime-negotiations-30166779.html.

"MTJA—Our Works." Malaysia-Thailand Joint Authority. Accessed February 10, 2016. http://www.mtja.org/ourwork.html.

Nanda, Prakash. *Rediscovering Asia: Evolution of India's Look-East Policy*. New Delhi: Lancer Publishers & Distributors, 2003.

Narine, Shaun. "The English School and ASEAN." *The Pacific Review* 19, no. 2 (2006): 199–218. doi:10.1080/09512740500473247.

"Natuna Gas Field, Indonesia." *Offshore Technology*. Accessed August 20, 2015. http://www.offshore-technology.com/projects/natuna/.

Nemeth, Stephen C., Sara McLaughlin Mitchell, Elizabeth A. Nyman, and Paul R. Hensel. "Ruling the Sea: Managing Maritime Conflicts through UNCLOS and Exclusive Economic Zones." *International Interactions* 40, no. 5 (2014): 711–36. doi:10.1080/03050629.2014.897233.

"Oil on Troubled Waters: Two Case Studies in a Disputed Sea." *The Economist*, January 24, 2015. http://www.economist.com/news/asia/21640403-two-case-studies-disputed-sea-oil-troubled-waters.

Ong, David M. “Implications of Recent Southeast Asian State Practice for the International Law on Offshore Joint Development.” 2011. http://cil.nus.edu.sg/wp/wp-content/uploads/2011/06/Session-5-David-Ong-JD-SEAsianStatePractice-Jun111-pdf.pdf.

“Paracel Islands.” The CIA World Factbook. Accessed February 5, 2016. https://www.cia.gov/library/publications/resources/the-world-factbook/geos/pf.html.

PCA Case Number 2013-19 between the Republic of the Philippines and the People’s Republic of China: Rules of Procedures, Permanent Court of Arbitration, (Arbitral Tribunal Constituted Under Annex VII to the 1982 UNCLOS 2013).

“Pedra Branca ‘Open’ to Fishermen.” *New Straits Times (Malaysia)*, June 7, 2008, sec. LOCAL.

Pedrozo, Raul. “China Versus Vietnam: An Analysis of the Competing Claims in the South China Sea.” *CNA Occasional Paper. Arlington, VA: Center for Naval Analysis*, 2014. https://www.cna.org/CNA_files/PDF/IOP-2014-U-008433.pdf.

Peraturan Pemerintah No. 38 Tahun 2002: Daftar Koordinat Geografis Titik-Titik Garis Pangkal Kepulauan Indonesia, 2002. http://www.kemendagri.go.id/media/documents/2002/06/28/PP_no._38_Thn_02.doc.

“Perjanjian Garis Batas Laut Indonesia-Singapura.” *Tabloid Diplomasi*, August 21, 2009. http://www.tabloiddiplomasi.org/previous-isuue/40-maret-2009/180-perjanjian-garis-batas-laut-indonesia-singapura.html.

Perlez, Jane. “In Victory for Philippines, Hague Court to Hear Dispute Over South China Sea.” *The New York Times*, October 30, 2015. http://www.nytimes.com/2015/10/31/world/asia/south-china-sea-philippines-hague.html.

Permanent Court of Arbitration. “The Republic of Philippines v. The People’s Republic of China.” Accessed May 19, 2015. http://www.pca-cpa.org/showpage.asp?pag_id=1529.

“Petroleum Potential and Exploration.” Malaysia-Thailand Joint Authority. Accessed November 2, 2015. http://www.mtja.org/petroleumpotential.php.

“Philippines and China: An Encounter in Reed Bank.” Stratfor, March 4, 2011. https://www.stratfor.com/analysis/philippines-and-china-encounter-reed-bank.

“Philippines Lodges Protest over Shooting in Spratlys.” *Deutsche Presse-Agentur*. January 19, 1998.

Prabhakar, W. Lawrence S. "The Regional Dimension of Territorial and Maritime Disputes in Southeast Asia." In *Maritime Security in Southeast Asia*, edited by Kwa Chong Guan and John K. Skogan. Routledge Security in Asia Series 4. London ; New York: Routledge, 2007.

Prescott, Victor. *Maritime Jurisdiction in Southeast Asia: A Commentary and Map*. Honolulu: East-West Environment and Policy Institute, 1981.

———. *The Gulf of Thailand: Maritime Limits to Conflict and Cooperation*. Kuala Lumpur: Maritime Institute of Malaysia, 1998.

Prescott, Victor, and Clive Howard Schofield. *The Maritime Political Boundaries of the World*. 2nd ed. Leiden ; Boston: M. Nijhoff, 2005.

———. *Undelimited Maritime Boundaries of the Asian Rim in the Pacific Ocean*. Maritime Briefing 3, 1. Durham: IBRU, 2001.

Prescott, Victor, and Gillian D. Triggs. *International Frontiers and Boundaries*. Leiden ; Boston: Martinus Nijhoff Publishers, 2008.

Purwanto, Eddy. "Minister Marty, Ambalat Should Never Be Forgotten." *The Jakarta Post*, November 19, 2012. http://www.thejakartapost.com/news/2012/11/19/minister-marty-ambalat-should-never-be-forgotten.html.

Quiano, Kathy. "Thailand, Cambodia Make Progress on Border Dispute." *CNN.com*. Accessed May 21, 2015. http://www.cnn.com/2011/WORLD/asiapcf/05/09/thailand.cambodia.dispute/.

Razavi, Ahmad. *Continental Shelf Delimitation and Related Maritime Issues in the Persian Gulf*. Publications on Ocean Development 29. The Hague: Martinus Nijhoff Publishers, 1997.

"Republic's Claim a Sore Point with 1,000 Coastal Fishermen." *New Straits Times (Malaysia)*, July 24, 2008, sec. LOCAL.

Roach, J. Ashley. "Malaysia and Brunei: An Analysis of Their Claims in the South China Sea." *CNA Occasional Paper*, 2014. https://www.cna.org/CNA_files/PDF/IOP-2014-U-008434.pdf.

Roughneen, Simon. "Naval Standoff Between Indonesia, Malaysia." World Politics Review, June 12, 2009. http://www.worldpoliticsreview.com/articles/3910/naval-standoff-between-indonesia-malaysia.

Samuels, Marwyn S. *Contest for the South China Sea*. New York: Methuen, 1982.

Saravanamuttu, Johan. “Malaysia’s Approach to Cooperation in the South China Sea.” In *Non-Traditional Security Issues and the South China Sea: Shaping a New Framework for Cooperation*, edited by Shicun Wu and Keyuan Zou. Contemporary Issues in the South China Sea. Farnham: Ashgate, 2014.

Schenk, Christopher J., Michael E. Brownfield, Ronald R. Charpentier, Troy A. Cook, and Timothy R. Klett. “Assessment of Undiscovered Oil and Gas Resources of Southeast Asia, 2010.” U.S. Geological Survey, June 2010. http://pubs.usgs.gov/fs/2010/3015/pdf/FS10-3015.pdf.

Schofield, Clive. “Defining Areas for Joint Development in Disputed Waters.” In *Recent Development in the South China Sea and the Prospects for Joint Development*, edited by S. Wu and N. Hong, 78–98, 2014. http://ro.uow.edu.au/cgi/viewcontent.cgi?article=2627&context=lhapapers.

———. “Unlocking the Seabed Resources of the Gulf of Thailand.” *Contemporary Southeast Asia* 29, no. 2 (August 1, 2007): 286–308. doi:10.2307/25798832.

Seah, Daniel. “The Treaty of Amity and Cooperation in Southeast Asia: The Issue of Non-Intervention and Its Accession by Australia and the USA.” *Chinese Journal of International Law* 11, no. 4 (2012): 785–822.

“Sedimentation Threat to Farmers, Fishermen.” *New Straits Times (Malaysia)*, September 16, 2002. http://www.lexisnexis.com.libproxy.nps.edu/lnacui2api/api/version1/getDocCui?lni=46SC-X610-00K1-R2F4&csi=270944,270077,11059,8411&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true.

Shenon, Philip. “China Sends Warships to Vietnam Oil Site.” *The New York Times*. July 21, 1994. http://www.lexisnexis.com.libproxy.nps.edu/lnacui2api/api/version1/getDocCui?lni=3S89-YP90-008G-F1FY&csi=6742&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true.

“Signing of the Anglo-Dutch Treaty (Treaty of London) of 1824.” *History SG*. Accessed August 10, 2015. http://eresources.nlb.gov.sg/history/events/5005d886-9c27-421e-a22d-44fb5965350c.

“Singapore Plans Megaport at Tuas to Nearly Double Box Capacity in 10 Years.” Accessed September 2, 2015. http://www.infinitycargo.com/index.php/en/careers/104-news-and-events/news/523-singapore-plans-megaport-at-tuas-to-nearly-double-box-capacity-in-10-years.

Singh, Hari. “Vietnam and ASEAN: The Politics of Accommodation.” *Australian Journal of International Affairs* 51, no. 2 (1997): 215–29. doi:10.1080/10357719708445211.

"South China Sea." US Energy Information Administration, February 7, 2013. https://www.eia.gov/beta/international/regions-topics.cfm?RegionTopicID=SCS.

"South China Sea Is an Important World Energy Trade Route, The." *US Energy Information Administration*, April 4, 2013. http://www.eia.gov/todayinenergy/detail.cfm?id=10671.

Stark, Sheila, and Harry Torrance. "Case Study." In *Research Methods in the Social Sciences*, edited by Bridget Somekh and Cathy Lewin. London: SAGE Publications, 2005.

Statement of the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf of 12 May 1977, 1977. http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/VNM_1977_Statement.pdf.

Steinshouer, Douglas W., Jin Qiang, Peter J. McCabe, and Robert T. Ryder. "Maps Showing Geology, Oil and Gas Fields, and Geological Provinces of the Asia Pacific Region." Open-File Report. US Department of Interior and US Geological Survey, March 25, 2013. http://pubs.usgs.gov/of/1997/ofr-97-470/OF97-470F.

"Stirring Up the South China Sea (IV): Oil in Troubled Waters." Asia Report. Brussels: International Crisis Group, January 26, 2016. http://www.crisisgroup.org/~/media/Files/asia/north-east-asia/275-stirring-up-the-south-china-sea-iv-oil-in-troubled-waters.pdf.

"Structure." Permanent Court of Arbitration. Accessed February 16, 2016. https://pca-cpa.org/en/about/structure/.

"Territorial Disputes Simmer in Areas of South China Sea." Oil and Gas Journal, July 13, 1992. http://www.ogj.com/login.html.

"Texte Du Traite Franco-Siamois (Franco-Siamese Treaty Text)." *The American Journal of International Law* 1, no. 3 (1907): 263–67. doi:10.2307/2212466.

"Thai-Cambodia Sour Relations: Thailand Cancels Oil-and-Gas MoU with Cambodia." *The Nation*. Accessed January 27, 2016. http://www.nationmultimedia.com/2009/11/06/national/national_30116017.php.

"Thailand: Exploration/Development History." *CCOP EPF*. Accessed January 27, 2016. http://www.ccop.or.th/epf/thailand/thailand_explor.html.

Thao, Nguyen Hong. "Joint Development in the Gulf of Thailand." *IBRU Boundary and Security Bulletin*, 1999, 81–82.

———. "Vietnam's First Maritime Boundary Agreement." *IBRU Boundary and Security Bulletin*, 1997. https://www.dur.ac.uk/resources/ibru/publications/full/bsb5-3_thao.pdf.

"Timeline: 1955-Present." *Center for New American Security*. Accessed February 7, 2016. http://www.cnas.org/flashpoints/timeline.

"Timor Gap Case Analysis." Accessed February 9, 2016. http://www.library.ohiou.edu/indopubs/1995/02/02/0014.html.

Tir, Jaroslav. "Territorial Diversion: Diversionary Theory of War and Territorial Conflict." *The Journal of Politics* 72, no. 2 (2010): 413–25. doi:10.1017/S0022381609990879.

Tonnesson, Stein. "The Economic Dimension: Natural Resources and Sea Lanes." In *War or Peace in the South China Sea?*, edited by Timo Kivimäki. NIAS Reports, no. 45. Copenhagen: NIAS Press, 2002.

"Treaty of Amity and Cooperation in Southeast Asia." Accessed January 21, 2016. http://agreement.asean.org/media/download/20131230235433.pdf.

Tun Abdullah Ahmad Badawi. "Statement on the Exchange of Letters between Malaysia and Brunei Darussalam, Dated 16 March 2009." *Ministry of Foreign Affairs Malaysia*, April 30, 2010. https://www.kln.gov.my/archive/content.php?t=7&articleId=735675.

United Nations Convention on the Law of the Sea. Accessed July 23, 2015. http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

"United Nations Convention on the Law of the Sea: A Historical Perspective. The." United Nations. Accessed September 28, 2015. http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm.

Valencia, Mark J. *The South China Sea: Hydrocarbon Potential and Possibilities of Joint Development : Proceedings of the EAPI/CCOP Workshop, East-West Center, Honolulu, Hawaii, 5-12 August 1980*, 1981. http://public.eblib.com/choice/publicfullrecord.aspx?p=1822292.

Valencia, Mark J., Jon M. Van Dyke, and Noel A. Ludwig. *Sharing the Resources of the South China Sea*. Vol. 31. Publications on Ocean Development. The Hague: Martinus Nijhoff Publishers, 1997.

Valencia, Mark J., and Masahiro Miyoshi. "Southeast Asian Seas: Joint Development of Hydrocarbons in Overlapping Claim Areas?" *Ocean Development and International Law* 16, no. 3 (1986): 211–54.

Vasquez, John A. *The War Puzzle*. Cambridge; New York: Cambridge University Press, 1993. http://site.ebrary.com/id/10450863.

Vasquez, John, and Marie T. Henehan. “Territorial Disputes and the Probability of War, 1816-1992.” *Journal of Peace Research* 38, no. 2 (March 1, 2001): 123–38. doi:10.2307/425491.

“World Factbook: Malaysia.” The CIA World Factbook, February 11, 2016. https://www.cia.gov/library/publications/the-world-factbook/geos/my.html.

Wright, Quincy. “The Corfu Channel Case.” *The American Journal of International Law* 43, no. 3 (1949): 491–94. doi:10.2307/2193642.

Wu, Shicun. *Solving Disputes for Regional Cooperation and Development in the South China Sea: A Chinese Perspective*. Chandos Asian Studies Series. Witney, Oxford: Chandos, 2013.

Yue-Choong, Kog. “Environmental Management and Conflict in Southeast Asia–Land Reclamation and Its Political Impact.” Working Paper. Institute of Defence and Strategic Studies Singapore, 2006. http://www3.ntu.edu.sg/rsis/publications/WorkingPapers/WP101.pdf.

INITIAL DISTRIBUTION LIST

1. Defense Technical Information Center
   Ft. Belvoir, Virginia

2. Dudley Knox Library
   Naval Postgraduate School
   Monterey, California